XI. SUMMARY RECORD OF THE RECONVENED FIFTH GENERAL MEETING HELD ON 6TH JULY 2007 AT 10.00 AM and 4: 30 PM

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

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

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

2. The **Delegation of the People's Republic of China** in its statement highlighted China's constructive role in Doha Development Agenda (DDA) in a manner of active participation. China believed that the successful conclusion of DDA would be conducive to strengthening the multilateral trading system, promoting the sustainable and balanced development of global economy and realizing mutual benefit and win-win outcome. China attaches great importance to DDA and had made positive contributions to the progress of negotiations by participating in a comprehensive way. During the WTO Ministerial Conference in Hong Kong in December, 2005, China acted as an important channel of communication among different parties, which contributed a lot to the process. Currently, the DDA negotiations were at a crucial stage. China would continue to support and promote the progress of the negotiations. As international trade protectionism reemerged in recent years, the member countries should treasure and constantly improve the multilateral trading system.

3. The focus of DDA in essence was development. The success of DDA, to a large extent, depends on the solution of the development issue. China's position was that the Doha Round talks should truly reflect the objectives of the Development Round. Since the conclusion of the Uruguay Round talks, the wealth gap between the developed countries and the developing countries had been further enlarged. A new round of talks should be beneficial to the settlement of the current imbalance of the economic development of the world, allowing the developing member countries to get benefit from the result of the negotiations. In particular, the developing member countries should have more market access opportunities.

4. It was well recognized that China, as a new member of WTO, had made magnificent efforts to the multilateral trading system. China would continue to make positive contribution in DDA according to its economic development and capability. Despite that the applied tariff was aligned with the bound tariff, China still positively participates in the negotiations on tariff reduction and played a bridging role in

the negotiations. This represented both the development spirit of the Doha Round and also the open spirit to promote the advancement of the multilateral trading system. As a major developing country with 700 million peasants, the issue of agriculture was vital in China. After its accession to WTO, China had already expanded its opening-up sectors in the agricultural field according to its commitments. Hence, in this round of negotiations, China's particular concerns on certain agricultural products should be properly guaranteed.

5. The **Delegation of the Republic of Indonesia** in its statement noted that the establishment of the WTO, eleven years ago raised hopes that it would, apart from challenges, create unprecedented opportunities for its member countries. The Indonesian experience showed that many international provisions of trade were not in their favor. Many of them did not reflect the concern of Indonesia as one of the developing countries. On the other hand, the delegation felt the need to transform WTO provisions into national Laws and regulations for serving the purpose of multinational companies coming from developed countries.

6. The delegation was of the view that the developing countries participated in the multilateral trading system in the hope that this would lead to their economic development and not because trade liberalization was an end in itself. The system had to meet this expectation. Effective measures were needed to make trade work as an engine of growth and human development. Given the differences in levels of development and the ability of countries to assume obligations, it was imperative to ensure that equal rules do not apply to unequal players. The multilateral trading system had to acknowledge that developing countries couldn't afford to travel at the same speed as developed countries to achieve gains. Therefore, obligations to be undertaken by the developing countries should not arise out of coercion.

7. In order to secure sufficient gains from globalization for developing countries, there was an urgent need to bring down the high tariffs and non-tariff barriers on products of export interest to developing countries. It remains the developing countries duty to ensure that *special and differential treatment* for developing countries and policy to deal with sensitive products remain an integral part of all elements of Negotiations. The delegation recalled that all special and differential treatment provisions in the WTO Agreements should be reviewed by strengthening them and making them more precise, effective and operational.

8. The WTO Hong Kong Ministerial Conference in December 2005, which had adopted a moderate Declaration set the Doha Development Round "back to track". Even before the Hong Kong Conference, there was less expectation among the negotiating States about the outcome of the conference. After the failure of the Cancun Ministerial Conference, the Member States were trying hard to bring the Doha Development round of negotiation back on track.

9. The delegation was of the view that although some interests of developing countries had been accommodated in the Hong Kong Conference, the Hong Kong Conference

after six days of intense negotiations did not contain specific numbers and formula structures for cutting subsidies and tariffs. Instead, Ministers agreed on some general parameters to guide the development of these "full modalities" on agriculture and non-agricultural market access (NAMA), and set themselves an April 2006 deadline for finalizing them.

10. The delegation noted that the negotiation on agriculture remained the central issue in the Hong Kong Conference. The level of ambition set by the Doha mandate continues to be the basis for the negotiation on agriculture. It was decided that the final balance would be found only at the conclusion of the subsequent negotiations and within the single undertaking. To achieve this balance, the modalities to be developed wood need to incorporate operationally effective and meaningful provisions of special and differential treatment for developing country Members. Agriculture was of critical importance to economic development of developing countries Members felt that they must be able to pursue agricultural policies that were supportive of their development goals, poverty reduction strategies, food security and livelihood concerns.

11. Indonesia, along with G-33 proposed that developing countries be given flexibilities in applying some tariff lines as SP3 product based on the indicator related to food security, livelihood security and rural development needs.

12. Equally important was the issue of market access for non-agricultural products. Indonesia gave particular attention to Annex B of the 2004 "July Package" which was the current basis of negotiation. It was less specific than the agriculture text, simply placed an additional paragraph outlining developing countries concerns, which relate to the tariff reduction formula, the starting point for binding unbound tariff lines, flexibilities for developing countries, and participation in sectoral initiatives. The developing countries should have longer implementation periods for tariff reductions.

13. With regard to the recent development at the Ministerial Meeting of G-33, G-20 and NAMA 11 conducted in Geneva on June 11, 2007, Indonesia urged that the final result of the Doha Round should reflect the balance and accommodate the aspiration and development interests in developing countries. Furthermore Indonesia reiterated its position that co-efficiency 10 for developed countries and co-efficiency 15 for developing countries were not acceptable since extreme liberalization was beyond the capacity of developing countries.

14. Indonesia also urged the Forty Sixth Session of AALCO to reflect on the current situation and to compare it with the lofty goals set at the Hong Kong Conference of 2005. It also urged Member States to begin to genuinely work to achieve those goals. It was important to recognize the need to rectify WTO legal framework and the conduct for world trade. The Asian and African countries through AALCO should agree on the common ground of what should be done and the objectives obtained. In so doing, Indonesia put high expectations that their participation in a rules based multilateral trading system would result in securing a fair share in the growth in international trade,

commensurate with the needs of the economic development.

15. Finally, Indonesia placed specific concern on the efforts of the Asian-African lawyers in order to enhance the capacity building on the WTO's issues, especially the dispute settlement mechanism. In this regard, the delegation proposed that in the near future, AALCO could organize a legal training programme for Asian-African lawyers, in collaboration with the WTO or UNITAR. The Indonesian delegation believed that the endeavor could make significant contribution towards the empowerment of the Asian-African States in the WTO forum.

16. The **Delegation of Malaysia** accorded its appreciation for the continued efforts of the AALCO Secretariat to keep the Member States informed of developments in WTO negotiations. On her part, Malaysia had continued to be actively involved in the deliberations of all issues arising from the Doha Round and had in particular engaged WTO Members on specific areas of concern and interest. This was reflected by the fact that Malaysia currently held the chairmanship of the General Council, the highest decision-making body under the WTO.

17. Although the Doha Round was intended to provide an avenue for WTO Members to improve the rules and procedures within the multilateral trading system, however, the vested interests of WTO Members had stalled the process and hindered the review process despite best efforts of certain Members. Therefore, Malaysia commended the success of the Hong Kong Ministerial Conference, which benefited from the commitment and political will of WTO Members to at least partially resolve some of the outstanding issues.

18. The delegation regretted that agriculture was used as a "Sword of Damocles" over the delegates by certain WTO Members, which hampers progress. In the process, certain hard compromises had to be made by the developing countries. However, the sacrifices of the developing countries enabled the process to move forward. Positive result achieved at the Hong Kong Ministerial Conference was the imposition of timelines for the conclusion of negotiations on the various issues. Nevertheless, the issue of the review of the Dispute Settlement Understanding, which was not bound by any time line, still remains unresolved.

19. Malaysia was of the view that the negotiations on agriculture as well as Non-Agriculture Market Access (NAMA) were critical to the conclusion of the Doha Development Agenda. There was a need to see serious substantive engagement by all WTO members in the multilateral process in Geneva, with constructive inputs and a real willingness to negotiate, which meant, defending their positions, but also showing the necessary flexibility. The multilateral process would greatly benefit from input coming from smaller group discussions.

20. Hence, strong commitment and political will from all WTO Members needs to be garnered in order to ensure the success of the Doha Round. Malaysia acknowledged that there had been some positive movement in the negotiations with Members indicating genuine commitment and interest to

explore possible ways to find common ground on various contentious issues. Gains would also accrue to developing countries by making the Special and Differential Treatment (S& D) provisions more precise, effective and binding. In the ultimate analysis, the S&D provisions must respond to, and be reflective of, the concerns of developing countries, and especially the least-developed countries amongst them.

21. As far as negotiations on agriculture were concerned, to rebalance the multilateral trading system in favour of developing countries, there had to be "effective cuts" in trade-distorting agriculture subsidies in developed countries. There needs to be elimination of the most damaging type of subsidies: export subsidies by 2013, with a substantial part to be eliminated by 2010. It also had to deliver improved market access, including on South-South trade, through the reduction of tariffs and removal of quantitative restrictions, especially on products where developing countries had a comparative advantage.

22. It was believed that in order to realistically conclude the Doha Round by December 2007, agreement on modalities would have to be reached by the end of July 2007 to allow preparation of necessary legal texts and schedules of concessions for each country. On the opening up of agriculture markets, Malaysia was hopeful that the developed countries would improve their offer, and the emerging economies would be afforded with protection which they were entitled albeit this did not mean that no further opening would take place.

23. For negotiations on NAMA, Malaysia was encouraged that Members were taking necessary actions to close gaps and build bridges between Members' divergent positions particularly on core issue of modalities of tariff reduction formula. In this respect, reaffirming DG Pascal Lamy's aspiration in his speech on 8 June 2007, the WTO Members needed an additional effort from the Unites States of America to improve its offer whilst the European Union (EU) and Japan should also be able to follow.

24. The Doha Development Agenda was the biggest challenge for the WTO since its creation in 1995. It was a challenge to achieve what was started in the Uruguay Round: a more level playing field in areas of particular interests to developing countries, such as agriculture. It is a challenge because it touches the edge of some of our Member's most entrenched interests. It would therefore take a great deal of political courage and commitment to conclude this Round successfully.

25. Malaysia was optimistic that the commitment and political will shown by the WTO Members during the Hong Kong Ministerial Conference would continue to facilitate and advance negotiations on the outstanding issues and enable these issues to be satisfactorily resolved within the agreed deadline of 2006. This was a test of the credibility of the WTO, and its ability to deliver on its promises to developing countries. This was also a test of the global community's willingness to turn their talk of international cooperation and policy coherence into meaningful results. And a test of whether or not one could construct a truly "global" trading system, where all countries benefit.

26. The **Delegation of Oman** in their statement focused on the Special and Differential Treatment to developing and least developed countries. About two thirds of the WTO's (around 150) members are developing countries. They play an increasingly important and active role in the WTO because of their numbers, because they were becoming more important in the global economy, and because they increasingly look to trade as a vital tool in their development efforts. Developing countries were a highly diverse group often with very different views and concerns. The WTO deals with the special needs of developing countries in three ways:

- The WTO agreements contain special provisions on developing countries.
- The Committee on Trade and Development is the main body focusing on work in this area in the WTO, with some others dealing with specific topics such as trade and debt, and technology transfer.
- The WTO Secretariat provides technical assistance (mainly training of various kinds) for developing countries.

27. Regarding the special provisions, the WTO agreements give developing and least developed (LCD) countries special rights or extra leniency "special and differential treatment" (S&D) treatment. Among these were provisions, which allow the developed countries to treat the developing countries more favourably than other WTO members (enabling clause).

28. Enabling clause was the WTO legal basis for the **Generalized System of preferences (GSP)**. Under the GSP, developed countries offer non-reciprocal preferential treatment (such as zero or low duties on imports) to products originating in developing countries.

29. The General Agreement on Tariffs and Trade (GATT, which deals with trade in goods) has a special section (part 4) on trade and Development which include provisions on the concept of non-reciprocity in trade negotiations between developed and developing countries when developed countries grant trade concessions to developing countries the developed countries grant trade concessions to developing countries they should not expect the developing countries to make matching offers in return.

30. Other measures concerning developing countries in the WTO agreements include:

- **Extra time** for developing countries to fulfil their commitment (in many of the agreements).
- Provisions designed to increase developing countries' **trading opportunities** through greater market access (e.g. in anti-dumping, safeguards, technical barriers to trade)
- Provisions requiring WTO members to **safeguard the interests** of developing countries when adopting some domestic or international measures (e.g. in anti-dumping, safeguards, technical barriers to trade)
- Provisions for various **means of helping** developing countries (e.g. dealing with commitments on animal and plant health

standards, technical standards, and strengthening their domestic telecommunications sectors).

31. The WTO Secretariat had special legal advisers for assisting developing countries in any WTO dispute and for giving them legal counsel. The service was offered by WTO's Training and Technical Cooperation Institute.

32. The least-developed countries received extra attention in the WTO. In 2002, the WTO adopted a work programme for least-developed countries. It contains several broad elements: improved market access; more technical assistance; support for agencies working on the diversification of least-developed countries' economies; help in following the work of the WTO; and a speedier membership process for least-developed countries negotiating to join the WTO.

33. A number of WTO members also provided financial support for ministers and accompanying officials from least-developed countries to help them attend WTO ministerial conferences.

34. Oman had been practicing liberal, open, economy with very low tariffs for many years long before the establishment of the WTO. Therefore, Oman's entry into WTO was in a sense a logical corollary.

35. Oman joined the WTO in November 2000. This was followed by a strong free trade agreements and negotiations for F.T.A.s on a bilateral, regional and plurilateral basis for trade-liberalization and trade expansion. The first to be put into practice was the Gulf Customs Union (GCU) and Free Trade Area of the Six Gulf States in 2003. GCU besides establishing an internal free trade area for the Member countries set up a customs union with a common external tariff of 5% on all goods imported by GCC countries. The next to flow and encompassing a wider region was the Greater Arab Free Trade Area (GAFTA) (members to which are Oman and 16 other Arab countries (covers only goods not services). It came into being in 2005 at the end of a series of phased duty reductions. This covered the entire merchandise trade between Oman and the other member countries representing 94% of inter-Arab trade.

36. In 2006, Oman achieved yet another milestone with successful conclusion of the bilateral Free trade Agreement with United States. The Oman-US FTA, the first bilateral FTA for Oman, was expected to eliminate tariff duties on all industrial and most agricultural products (with some special protection for select agricultural products of Oman) between Oman and US. It also provides a 10 year grace period to exempt a certain quota of Omani exports from customs tariffs thereby providing a big boost to textiles and ready-mades. In the field of services, Oman made commitments to open up banking, insurance, telecommunications, professional and business services, construction services, education/health services, distribution services etc. However, while allowing entry to foreign services suppliers, limitations and restrictions had been placed on them under the negative list to protect Oman's interests.

37. Separately, at the GCC level, Oman and other Member countries were actively pursuing FTA negotiations with

a number of countries/economic blocs among them EU, China Japan, Singapore, India, Pakistan. Some of these negotiations had reached an advanced stage and the G CC-EU-FTA was expected to be finalised soon.

38. WTO members had agreed that if one or more members believed that fellow members were violating trade rules they would use the multilateral system of settling dispute. A third group of countries could declare that they had an interest in the case and enjoy their rights. Disputes in the WTO were essentially about broken promises. The system was based on defined rules, with timetables for completing a case. First, rulings were made by a panel and endorsed (or rejected) by the WTO's full membership. Appeals based on points of law were possible. However, the priority was to settle disputes through consultations rather than to pass judgments.

39. Although most of the Dispute procedures resemble a court or tribunal, the preferred solution of for the countries to settle the Dispute through consultations between the governments, and even when the case had progressed to other stages consultation and mediation were still always possible.

40. At the fourth Ministerial Conference held in Doha, Qatar in November 2001, the Ministers had agreed to negotiate on improvements and clarifications of the DSU and that said negotiations process on improvements and clarifications of the DSU shall take place in the special Session of the DSB and shall complete the review not later than May 2003.

41. The Chairman of the Special Session, on 28 May 2003, circulated a draft legal text which contained Members' proposals on a number of issues, including: enhancing third-party rights; introducing an interim review and remanding at the appeals stage; clarifying and improving the sequence of procedures at the implementation stage; enhancing compensation; strengthening notification requirements for mutually-agreed solutions; and strengthening special and differential treatment for developing countries at various stages of the proceedings. However, the Chairman's Text failed to reflect a number of other proposals by Members due to the absence of a sufficiently high level of support.

42. The General Council at its meeting on 24 July 2003, agreed to extend the negotiations from 31 May 2003 to 31 May 2004. The Cancun Ministerial Conference which was supposed to review the progress in the negotiations in the Special Sessions of the DSB, failed to do so, as there was no consensus among the Members.

43. The discussion that ensued thereafter allowed a very constructive exchange of views and led to a clarification of many aspects of the proposed text. However, as part of July 2004's Decision, the General Council adopted a recommendation which included the following, "the further work of the Special Session, the onus will remain on participants in the negotiations to continues to develop areas of convergence so as to lay the basis for a final agreement to improve and clarify the DSU."

44. The negotiations on DSU review was effectively on hold, because of the pressing areas of the ongoing talks such as Agriculture, NAMA and Services. The WTO Director General Pascal Lamy in his speech to the G-8 Summit in Germany on 8 June 2007 said that an interim Doha agreement is now "within reach" and asked G-8 for "added political effort" to spur Doha Agreement.

45. Oman recommend that the developing and least developed countries should build alliance and have a firm stand so that they could prevent what had happened in 2003 where the legal text failed to have high level of support and there was no consensus among members. It was hoped that Developing and Least Developed countries will move forward with the Doha agreement and other matters in the future.

46. The **Delegation of the State of Kuwait** handed over to the AALCO Secretariat their statement in Arabic. However, due to time constraint, it was very difficult to translate into English and reproduce its summary. Nonetheless, the full text of the statement would be reproduced in the Verbatim Record of the Forty-Sixth Session after translation.

B. An Effective International Legal Instrument against Corruption

1. **The President** invited Dr. Xu Jie, Deputy Secretary-General of AALCO to introduce the item "An Effective International Legal Instrument against Corruption"

2. **Dr. Xu Jie, Deputy Secretary-General of AALCO** while introducing the topic "An Effective International Legal Instrument Against Corruption" contained in Secretariat Document AALCO/46th /CAPE TOWN SESSION/2007/**S 11**, noted that the Secretariat Report provided a brief overview of the developments in the implementation of the UN Convention against Corruption (UNCAC) 2003 and the Report on the First Conference of the States Parties (CoSP) to the UN Convention against Corruption.

3. He recalled that the Secretariat, as mandated by the resolutions adopted at the Forty-Third and Forty-Fourth Sessions of AALCO, had prepared and presented to the Member States two books, namely, *Combating Corruption: A Legal Analysis* (in 2005) and *Rights and Obligations under the United Nations Convention against Corruption* (in 2006) with a view to provide an in-depth analysis of the international anti-corruption instruments, specifically the UN Convention against Corruption and a detailed analysis of the nature of obligations of Member States while implementing the principles embedded in the Convention against Corruption into their national jurisdictions. The Member States while welcoming the publications, had appreciated the Secretariat for the efforts of the

Secretariat in assisting them in implementing the obligations under the Convention.

4. Dr. Xu Jie noted that the UN Convention against Corruption, which entered into force on 14 December 2005, had presently 140 signatories and 93 parties. The entry into force of the Convention was indeed a defining movement in the history of international anti-corruption efforts. This Convention would indeed become the global standard for a strong international anti-corruption regime, and its adoption marked the larger trend towards greater international regulation of corruption in public and private life.

5. However, he said that much needed to be done to realize the objects and purpose laid down in the Convention. First and foremost was to ensure that the Convention was effectively implemented and the failure to address this issue was the most serious shortcoming of the Convention. At the first Conference of States Parties to the UN Convention against Corruption held in Jordan, December 2006, the States had only established a Working Group on Review of Implementation to recommend appropriate mechanism or body to assist in the effective implementation of the Convention.

6. The other two issues, which were of great importance especially for the developing countries, were the issues of Asset Recovery and Technical Assistance. The Conference was successful in establishing two Working Groups - on Asset Recovery and on Technical Assistance, to advise and assist the Conference in the implementation of its mandate on the return of proceeds of corruption and on technical assistance. He hoped that during this Session, the Member States of AALCO could reflect on their position and share their experience and recommendations on these issues, which could be presented before the Working Groups for further deliberation and action.

7. In this context, he noted that the Secretariat endorsed the recommendation by some of the AALCO Member States during the last two Sessions for the establishment of a Group of Legal Experts from the AALCO Member States to prepare a Model Law in line with the UN Convention against Corruption. The Group of Experts could not only help complement the work of the three Working Groups established by the Conference but also could bring forth a common understanding among the Asian and African countries on these issues, with an objective of drafting a Model Law for national implementation. He hoped that the Member States would consider this recommendation and provide the Secretariat with suitable direction/ mandate during this Session.

8. Dr. Xu Jie concluded that the challenge facing the international community now was to ensure that the obligations under the Convention were implemented in letter and spirit by both the developed and developing countries. It was the will of all the States to cooperate among them against this crime, which would determine the ultimate success of the Convention.

9. The **Delegate of the Islamic Republic of Iran**[1] noted that the adoption of the UN Convention against Corruption signaled an important step forward in controlling the menace. It was indicative of an international consensus that corruption was no more a local crime and that it was a crime with transnational dimensions. Therefore, all States should work together to prevent and combat it in a comprehensive manner.

10. The delegate noted that the Islamic Republic of Iran was a signatory to the UN Convention against Corruption. The legal procedure for ratification of the Convention by the Parliament had been already in progress and the final decision to ratify was to be made. The delegate noted that his country had played an active role in the process of negotiation of the Convention and was very eager to see the full implementation of that unique legal instrument. He believed that the Convention provided an effective legal framework for multilateral cooperation against corruption, including through mutual legal assistance for confiscation and extradition of illegally acquired assets. Since asset recovery and restitution of proceeds of crime to their legitimate owners was a fundamental principle of the Convention, necessary measures should be taken to materialize this principle.

11. The Islamic Republic of Iran, as a Member State of the Organization of Islamic Conference (OIC) and Economic Cooperation Organization (ECO), had major role in regional interactions in fighting against different forms and manifestation of corruption. Accordingly, Islamic Republic of Iran had actively participated in the First OIC Anti Corruption and Enhancing Integrity Forum (Kuala Lumpur, 28 – 30 August 2006) and wished to host the Second Forum in Tehran in 2007. Moreover, in the First Meeting of the ECO Ministers for Interior, held in Tehran on 1st November, 2006, member States acknowledged that transnational organized crimes and some corrupt activities such as money laundering posed a common concern and they must fight them jointly. They agreed to setup a High Level Experts Group to prepare a comprehensive cooperation plan to launch a coordinated and organized campaign against crimes.

12. The Iranian delegation was of the view that the development of globalization and frequent exchanges had been providing a space for transferring of illicit money to other countries by criminals, which had been a big obstacle in punishing corrupt crime of every country. Illicit assets indicate the assets that the criminals acquired by committing corrupt and criminal activities and the benefits brought about from the activities. It included illegal incomes, properties, facilities or other tools, and the benefits generating from these assets, such as interests, coupons etc. Recovering illicit assets was an important measure and procedure for the law enforcement agencies of a country to obtain evidence of a corrupt crime, the important measure of protecting public interest, resuming rule of law and maintaining fairness and justice, as well as the need of keeping corrupt crime within limits and promoting harmonious development of human society.

13. The Iranian delegation believed that recovering proceeds of corruption

[1] Official statement submitted to the Secretariat.

was one of the key elements in dealing effectively with corruption and had become a significant issue for many States especially developing countries. The illegal misappropriation of funds undermined foreign aid, drains currency recourses, reduces the tax base and increases poverty levels. And it was necessary to recover and restore the assets illegally transferred from the country of origin.

14. Accordingly, the delegate felt that all the State Parties and signatory States should pave the way for realization of asset recovery in different stages: investigative measures to trace the assets; preventive measures to immobilize the assets; and confiscation. Further, legal proceeding for complying with these stages may be instituted in jurisdiction where the offence took place, in the jurisdiction where the assets were located or in both places simultaneously.

15. Asset recovery had consistently emerged as a top priority in various consultations and deliberations on corruption. Effective asset recovery would help countries redress the worst affected of corruption, while sending a strong message to corrupt officials that there would be no place to hide their illicit assets. It was thus crucially important to recognize that the UNCAC provided for effective way for international community to trace back the illicit assets and there was a need to overcome the practical problems that hamper recovery of the proceeds of corruption which may vary depending on the countries involved and may generally be attributed to the following: the absence of the political will among State Parties, weaknesses in the prevention and control of money-laundering, loopholes in legal frameworks and a lack of expertise, capacity and resources to successfully trace, freeze and confiscate assets both domestically and internationally. States Parties should adopt laws and procedures to detect, recover and return of assets of illicit origin and to return them to their countries of origin and deny safe haven to those who were engaged in high level corruption and who illicitly acquired assets.

16. States Parties should attain and implement the highest international standards for transparency and the exchange of information for the implementation of the chapter 5 of the UNCAC on asset recovery.

17. The delegate said that the UNCAC provides a comprehensive framework for concerted action by States Parties to prevent and control corruption at the national level and to cooperate at the international level. And one of the purposes of the Convention in terms of Article 1 was: "(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery."

18. He reiterated that implementation of the Conventions was an interconnected process that meant eight chapters of the Convention should be implemented comprehensively. Playing the significant role in different areas of full implementation of UNCAC, technical assistance should be coordinated in ensuring that overlapping was avoided and resources were used effectively.

19. The delegate said that the Islamic Republic of Iran, as a signatory of

UNCAC, had taken a series of steps on training of different governmental institutions. In this regard, a workshop on the review and identification of legislative capacity and capabilities of judiciary against corruption was convened in Tehran from 2 to 3 August 2006. In latter workshops, different participants from Executive, Legislative and Judiciary branches participated, deliberated and considered, within the three working groups, various dimensions of UNCAC and its implementation in Iranian governmental system.

20. The delegate noted that as it could be deduced from previous experiences, suppression of manifestations of corruption, though necessary, would have very limited effect in controlling the problem. Fighting corruption required the identification, and then elimination, of its underlying causes and/or breeding grounds. For example, as long as there were defective laws and regulations which breaded corruption, the enhancement of supervisory and judicial bodies and/or aggravating punishments could not be effective in fighting corruption. The same was true when due to national and/or regional economic conditions, illicit trafficking in specific categories of goods into or from a country was highly profitable. It was obvious that the expansion of law-enforcement manoeuvre across borders and the arrest and punishment of traffickers would not have much effect in controlling the phenomenon.

21. The delegate informed that the Islamic Republic of Iran's new campaign against corruption began with the issuance of Eight Article Verdict by the Supreme Leader in 2001. The most notable elements of the new anti-corruption strategy were: Establishment of a Headquarter for Fighting Economic Corruption, Prioritization of anti-corruption efforts among active elements of the Iranian society, Development of a national program for promotion of integrity in administrative system, Privatization of State-owned corporations and/or economic institutions and Adoption of anti-corruption laws

22. The Islamic Republic of Iran, during the First Session of Conference of the State Parties to the United Nations Convention against Corruption (Dead Sea, 10-14 December 2006), had actively participated and supported the resolutions adopted by the Conference of the States Parties to the UNCAC.

23. The Islamic Republic of Iran desired to have very active participation in various working groups, established by Conference of the States Parties to the UNCAC, on "Review of implementation", "Asset Recovery" and "Technical assistance", for making recommendations to the Conference of the States Parties at its second session to be convened in Indonesia.

24. In conclusion, the delegate remarked that fighting corruption was the responsibility of all States, developed or developing. All had to shoulder the responsibility to fight this fatal cancer and cooperate more closely to that effect. It was also expected that the developed countries, generally the destination of much of illegally acquired assets, adopt strict measure against illegal transactions, on the one hand, and facilitate their recovery and return to the

countries of origin. Corruption would not be overcome unless international and regional participation and cooperation was warranted.

25. The **Delegate of the State of Qatar**[2] noted that corruption was a fatal disease, which effected humanity since the early times of history. It took different forms and manifestations thus leading to different results of corruption on earth. Today humanity was suffering from the spread of corruption, as it had become a phenomenon, which caused concern as well as apprehension to the people and States, which should be confronted. During the past decade, an increase in the spread of corruption on the local, regional and international level had been witnessed. Corruption was multifaceted and its ways and means were ramified to the extent that it was found in most economic and political systems, rich or poor. The spread of corruption had deplorable index, which hampered the process of development, particularly in the least developing countries, and had contributed to impeding the steps of reforms and democracy in many countries.

26. The delegate noted that the most outstanding efforts in combating corruption in the international level were the following: UN Convention on Transnational Organized Crime, and second the UN Convention against Corruption.

27. The delegate informed that Qatar on the 12 December 2006 had acceded to the UN Convention against Corruption. It was also a founder of the Group of Offices for the Financial Procedures for the Middle East and North Africa, formed in November 2004 as a voluntary association to combat money laundering and funding of terrorism. In the domain of money laundering, the Central Qatari Bank played a leading role in implementing decrees on money laundering. The Committee of Money Laundering, which had been formed according to these legislations were concerned with money laundering.

28. The **Delegate of the Republic of Indonesia** said that corruption was one of the greatest threats that the world had been facing during the last decades and it fell under the category of extra-ordinary crime. It had not only violated national borders and jurisdictions of States, but also posed political, economic, financial and socio-cultural challenges to the international community, including the Asian and African region. Corruption undermined democracy, ethical values, justice and the rule of law. It destabilizes governments, taints, public service and could in the long run deepen poverty, and jeopardize sustainable development.

29. Against this backdrop, his delegation urged all Asian-African countries to intensify regional cooperation to deny safe haven to officials and individuals guilty of corruption, those who corrupt them and their illicitly-acquired assets, and to prosecute those engaged in bribery, including in international business transactions. Indonesia further agreed that the implementation of the principles of the UN Convention against Corruption could have a positive impact in advancing their commitment towards a cleaner and more honest and

[2] Statement delivered in Arabic. Unofficial translation from the Interpreters' version.

transparent community in the Asia-African region. In addition, Indonesia had already ratified the UN Convention against Corruption on 21 March 2006 by Act Number 7.

30. In this connection, the delegate appreciated the efforts taken by the AALCO Secretariat to publish a guideline book outlining the details of the rights and obligations of the state parties to the convention.

31. He than elaborated on four fundamental issues contained in the UN Convention against Corruption, which must be implemented by the State Parties' to the Convention.

32. Firstly, Corruption could be prosecuted after the act, but first and foremost, it required prevention in both the public and private sectors. Hence, Indonesian delegation was of the view that States must endeavor to ensure that their public services were subjected to safeguards that promoted efficiency, transparency and recruitment based on merit. Transparency and accountability in matters of public finance must also be promoted, and specific requirements were established for the prevention of corruption, particularly in the critical areas of the public sector, such as the judiciary and public procurement.

33. For these reasons, the Convention called on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what could be done about it. Article 5 of the Convention enjoined each State Party to establish and promote effective practices aimed at the prevention of corruption.

34. Secondly, Indonesian delegation was of the view that the Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if those were not already crimes under domestic law, not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, were also dealt by it. Convention offences also dealt with the problematic areas of private-sector corruption. Therefore, he urged countries to adapt their national legislation by inserting the contemporary criminalization of kinds of corruption offences and practices.

35. Thirdly, the Convention urged countries to enhance international legal cooperation in every aspect of the fight against corruption that included prevention, investigation, and the prosecution of offenders. Countries were bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries were also required to undertake measures, which would support the tracing, freezing, seizure and confiscation of the proceeds of corruption. Therefore, Indonesia called upon Asian-African countries to create a best practice on Mutual Legal Assistance and Extradition in order to ensure the supremacy of law in combating corruption.

36. Fourthly, the most important aspect of the Convention was that it created a new breakthrough by creating an asset-recovery mechanism. This was an important issue for many developing countries where high-level corruption had plundered the national wealth, and where resources were badly needed for reconstruction and the rehabilitation of societies under new government.

37. The delegate noted that several provisions specified how cooperation and assistance would be rendered. In particular, in the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it; in the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting state; in all other cases, priority consideration would be given to the return of confiscated property to the requesting State, to the return of such property to the prior legitimate owners or to compensation of the victims.

38. Effective asset-recovery provisions would support the efforts of countries to redress the worst effects of corruption while sending at the same time, a message to corrupt officials that there would be no place to hide their illicit assets. Accordingly, article 51 provides for the return of assets to countries of origin as a fundamental principle of this Convention. Article 43 obliges State parties to extend the widest possible cooperation to each other in the investigation and prosecution of offences defined in the Convention. With regard to asset recovery in particular, this article provides *inter alia* that "In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties".

39. In responding to the problem of corruption, domestically, Indonesia had been undertaking extensive measures to reduce the incidence of corruption as well as to improve and strengthen institutional capacity and the legal infrastructure. The current "United Indonesian Cabinet" gave high priority to improve governance, including combating corruption. As stipulated by the People's Consultative Assembly's Decree No.XI/1998, combating corruption constituted a national commitment and borne out by subsidiary laws and regulations such as Law No.28/1998 on State Executors Clean from Corruption, Collusion and Nepotism (amended by Law No.20/2001). In addition, the Indonesian Government had established the Anti-Corruption Commission through Enactment of Law No.30/2002.

40. As part of its strong commitments in enhancing cooperation between countries in eradicating corruption, Indonesia would act as host to the second session of the Conference of the States Parties to the UN Convention against Corruption, which would be held from 28 January to 1 February 2008. Indonesia had actively taken part in a number of meetings in order to seek input, which would allow Indonesia to contribute greatly to the

CSP-2 UNCAC. Indonesia had taken part in the Expert Group Meeting on Review Implementation of the UNCAC, held in Vancouver 9-11 March 2007, the Global Forum V on Fighting Corruption and Safeguarding Integrity "Fulfilling Our Commitments: Effective Action Against Corruption" held in Johannesburg, 2-5 April 2007, and the Global Financial Crime Meeting in Bangkok, 17 – 20 April 2007.

41. He noted that Indonesia also planed to hold several side events in conjunction with the holding of the CSP2 – UNCAC. Indonesia would be hosting the International Conference on Asset Recovery in September 2007, which would be held back–to-back with the Steering Group of ADB-OECD anti Corruption Meeting for Asia and the Pacific; and also the Second Conference on the International Association of Anti Corruption Authorities (IAACA-2) from 20 to 23 November 2007. Indonesia hoped that holding of these events would reaffirm its strong commitments towards the eradication of corruption.

42. At bilateral and regional levels, Indonesia continued the effort to expand cooperation with neighboring countries in combating corruption and in repatriating illegal assets abroad through extradition and mutual legal assistance in criminal matters agreements. Indonesia had signed bilateral agreement with Malaysia, the Philippines, Thailand, Australia, the Republic of Korea, Hong Kong SAR, and with Singapore in May 2007.

43. While concluding, the delegate noted that the UN Convention against Corruption was a remarkable achievement. But it was only a beginning and one must build on the momentum achieved to ensure that all States were willing and able to ratify the Convention at the earliest possible date. This Convention could make a real difference to the quality of life of millions of people around the world. And by removing one of the biggest obstacles to development, it could help achieve the Millennium Development Goals. He was sure that Asian-African Countries would do whatever they could to support the efforts to eliminate the scourge of corruption from the face of the earth.

44. The **Delegate of Thailand** noted that the issue of corruption had become increasingly more serious in light of the evolving form and complexity of such crime. Countries were faced with so-called 'policy corruption' and 'borderless corruption'. This has resulted in negative impacts on economic, social, and political sectors of countries around the world. Realizing this fact, the Royal Thai Government had set as a priority in its national agenda to fight against corruption. In this connection, Thailand recently nominated new commissioners to the National Counter Corruption Commission (NCCC) comprising of persons with good moral character, high integrity and with strong determination to uproot the practice of corruption in Thailand. The NCCC was intended to expand its role in preventing and suppressing corruption both in public and private sectors. Its missions were to strengthen the network of cooperation among the public sector, private sector, civil society, mass media, and international organizations as well as to amend laws, rules, and regulations and to develop strategy and monitoring mechanism to accomplish their goals. To date, the NCCC's work had always

been in line with the UNCAC, Anti-corruption Action Plan for Asia-Pacific, ADB/OECD Action plan as well as other relevant sub-regional anti-corruption regimes and guidelines. One of its most effective mechanism which deserved mentioning was the setting up of an internal inspection/auditor in each unit of government and state agency, thereby successfully overseeing and preventing potential areas of corruption in the government sector on a timely basis.

45. On the legislative side, several draft law amendments and draft of new legislation had been proposed to incorporate the following:

a. The definitions and provisions relating to "Foreign Public Official" and "Official of a Public International Organization";
b. The suspension of the statute of limitations where the alleged offender had evaded the administration of justice; and
c. Asset recovery law.

46. That delegate noted that it was encouraging that lately the Council of Ministers of Thailand had approved the draft amendment of the Thai Penal Code regarding the incorporation of such definitions and provisions and the suspension of the statute of limitations as mentioned above. These amendments would soon be submitted to the Thai National Legislative Assembly for their consideration. Moreover, the new draft Asset Recovery Act and the amendment of the Act on Mutual Assistance in Criminal Matters had already been submitted by the Ministry of Justice of Thailand to the Council of Ministers to facilitate the implementation of Chapter V of the UNCAC.

47. In order to improve the future work of the NCCC to effectively combat corruption in the long-term, Thailand believed it was crucial to promote attitudes and values of honesty as a preventive measure against corruption. As a result, the NCCC's work had to be in coordination with private sector organizations as well as the mass media. The raising of public awareness as well as educating and instilling in young generation positive values, morals and integrity from an early age on to the working level were key to solving this prevailing problem. Numerous projects and activities such as seminars, anti-corruption handbooks and publicity campaign had been introduced to enhance public participation and imprint antipathy to corruption.

48. Reflecting from the above, Thailand therefore deemed it vital to have a close and continuous monitoring mechanism in order to achieve the goal of UNCAC. This could be in the form of status report of State's actions against corruption provided by UNODC in order for States to learn from one another through their experiences in dealing with particular problems. Also the regional seminar should be held regularly in order to disseminate knowledge, lessons learnt and provide input to prevent and suppress corruption. It was also helpful if technical assistance from international agencies was available so as to enable States to undertake domestic legal adjustment in line with international law and good practices. It was therefore imperative that countries not only have more knowledge and skills but must

build upon cooperation at all levels to curb this pressing issue.

49. In conclusion, he reaffirmed Thailand's commitment to the principles enshrined in the Bangkok Declaration and the recommendations adopted by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, and their firm belief that the accession to and implementation of the UNCAC were central to the efforts of the international community to fight corruption. In this regard, Thailand, by making all efforts, would soon ratify the UNCAC and would accord high priority in cooperating with other countries in combating corruption as well as promoting a culture of integrity and accountability in both our public and private sectors.

50. The **Delegate of Nepal** said that corruption had emerged as a serious threat to democracy, good governance and rule of law. It was shaking the foundation of justice. When public authority was abused for personal undue benefits, social stability, social order and rule of law were obviously jeopardized. Equally notable was that corruption also involved transfer of public funds and assets from public to private, from State to individual and sometimes abroad. So corruption also had fatal effects on the economic growth of a nation.

51. Given that corruption was a crime, with grave national and international ramifications, and with complex and diverse causes and consequences, it was obvious that national legislation and mechanism alone would not be capable of coping with the crux of this heinous crime. Without collective effort and collaborative mechanism at the sub-regional, regional and global levels, it would be quite impossible to root it out completely. In view of this fact, it had always been urging for a comprehensive and multi-disciplinary approach. At this juncture, his country believed that the UN Convention against Corruption could serve as an effective instrument for the world community to undergo such approach to curb the fabrics of corruption.

52. As a signatory to UNCAC, Nepal was rigorously working out to establish necessary legal, administrative and institutional frameworks and measures required to effectively implement the Convention at the national level. A high level committee formed at the Ministry of Law, Justice and Parliamentary Affairs was working out administrative, legislative and judicial measures required to domesticate the Convention. Most importantly, they were drafting protection of witness and whistleblower protection related laws. In view of the firm commitment of the government of Nepal to curb corruption, a comprehensive anti-corruption strategy incorporating preventive, curative and reformative measures were underway. Nepal's efforts were primarily focused on national anti-corruption policies and mechanisms, strengthening judicial integrity and capacity, promoting integrity in public and private sectors, denying the proceeds of corruption and facilitating the recovery of illicit assets and penalization of crime of corruption.

53. The delegate noted that presently, Nepal was in the process of exhausting its domestic legal requirements to ratify this Convention. It had already enacted some enabling laws,

which include the Prevention of Corruption Act, 2002 and the Commission for the Investigation of Abuse of Authority Act, 1991 with a view to combating corruption more efficiently and effectively.

54. Given the complexities of the issues, a developing country like Nepal was obviously compelled to face serious financial and human resources constraints. In this regard, a model legislation required to implement the Convention would be helpful. Thus, this Organization should begin to prepare and expedite the process of making such model law. Moreover, it was noted that some provisions of the Convention were somehow ambiguous, which included provisions relating to international cooperation, establishment of supervisory framework and promotion of transparency among private entities. Hence, it was equally important that such model laws intend to elaborate such provisions without running counter to the spirit of the Convention.

55. In addition, he also suggested that a group of experts could be established to render legal advice and technical assistance to the members facing difficulty while domesticating the Convention.

56. The **Delegate of Pakistan** said that Pakistan had been closely following the developments in this area, and it had the privilege to be one of the first signatories of United Nations Convention Against Corruption. Immediately after the signing of the Convention in December 2003, at Merida, Mexico, in pursuance of the global agenda against the menace of corruption Pakistan hosted an International Conference in Islamabad in April 2004. The Conference was attended by large number of delegations including heads of Anti-Corruption Agencies and representatives of many international organizations. The Prime Minister of Pakistan inaugurated the Conference while the President of Pakistan General Pervez Musharraf was the Chief Guest at the concluding session. The initiative of the Pakistan Government in convening this international Conference was a convincing demonstration of the national commitment for implementation of the UN Convention against Corruption.

57. The objectives of the Conference were to gather views and experiences of the international community and to develop a national consensus towards ratification of the Convention. There had been no let-up on this initiative in Pakistan. National Accountability Bureau (NAB) had been put in the lead role to evaluate the provisions of the Convention in consultation with other stakeholders.

58. Since its inception under the National Accountability Ordinance promulgated in 1999, NAB formulated a comprehensive National Anti-Corruption Strategy (NACS) that was now in its implementation stage through an implementation committee, which had been constituted at a high level. The National Anti-Corruption Strategy was a radical departure from the traditional enforcement approach. It was a three-pronged approach encompassing awareness, prevention and enforcement. National Anti-Corruption Strategy suggested reforms across all pillars of the national integrity systems. Currently host of reforms were being carried out

across all sectors. The delegate informed that the Government of Pakistan was actively engaged in taking forward the process of ratification of the Convention. The NAB published a report annually. The Bureau had effectively implemented its goals and had been successful with regard to the return of assets from corrupt elements.

59. The **Delegate of the Republic of South Africa** noted that corruption could pose a serious threat to the stability and security of societies, by undermining the institutions and values of democracy, ethical values and justice and by jeopardizing sustainable development and the rule of law. It was therefore imperative that the international community was involved in the fight against corruption.

60. He said that in Africa this had been done over the past decade, as African leaders had articulated a bold "African Agenda" which rests on five key pillars: development and poverty eradication, peace and security, governance and democratization, accelerated economic growth, and partnerships with the international community. The fight against corruption was a key element of the African initiatives to eradicate poverty and to put African countries on a path of sustainable growth and development. It was part of the continent's efforts to instil good political, socio-economic and corporate governance.

61. He noted that South Africa was a party to all the main international and regional treaties against corruption, including the African Union Convention on Preventing and Combating Corruption, the SADC Protocol against Corruption, the OECD Anti-Bribery Convention and the United Nations Convention against Corruption (UNCAC). South Africa had incorporated the specific requirements of these treaties in its domestic law. The South African government had since the advent of democracy painstakingly put in place policies, programmes, laws, partnerships and collaborations at national, regional and international level, directly aimed at combating corruption in their society. However, the multi-sectoral and multi-faceted nature of corruption continued to be a challenge that required the combined energies of governments and other stakeholders. One of the most important pieces of legislation in the fight against corruption was the Prevention and Combating of Corrupt Activities Act, 2004. This Act was signed into law on 27 April 2004 to set out additional tools to fight corruption. These include the duty of persons in positions of authority to report corrupt transactions and the establishment of a register of "blacklisting" of businesses that commit corruption, especially in government procurement.

62. Preventative anti–corruption bodies in South Africa included, amongst others, the Public Service Commission, the Public Service Anti-Corruption Unit of the Department of Public Service and Administration, the South African Police Services, the National Prosecuting Authority, the Auditor-General, the Public Protector, Specialized Commercial Crime Courts and the Directorate of Special Operations.

63. Section 217 (1) of the Constitution of the Republic of South

Africa, 1996 mandated that when an organ of State in the national, provincial or local government or an institution contracts for goods or services, it must do so in accordance with a system, which was fair, equitable, transparent, competitive and cost effective. Various legislative initiatives made this possible, primarily through the enactment of the Public Finance Management Act (PFMA) and Municipal Finance Management Act, Treasury Regulations, the Preferential Procurement Policy Framework Act, the Public Audit Act and the Public Protector Act.

64. Section 32 of the Constitution guaranteed the right of access to information and provides that everyone had the right of access to any information held by the State, and any information that was held by another person and that was required for the exercise or protection of any rights. The Promotion to Access to Information Act, 2000, gave effect to section 32 of the Constitution and in general promoted transparency, accountability and effective governance of all public and private bodies by empowering and educating everyone to understand their rights in terms of the Act, to understand the functions and operation of public bodies and to effectively scrutinise, and participate in, decision-making by public bodies that affect their rights.

65. The delegate noted that South Africa recognized the need for participation of civil society in the fight against corruption. To this end, a tripartite alliance was established in 2001, between the public and private sector and civil society organizations, known as the National Anti-Corruption Forum (NACF). The NACF contributed towards the establishment of a national consensus through the coordination of sectoral strategies against corruption. On a practical level, anti-corruption hotlines had been established in eight national departments and five provinces to make it easy to report corruption. A national anti-corruption hotline (NACH) was also launched on 1 September 2004 with the Public Service Commission assigned the important responsibility of managing it.

66. As regards whistleblowing, effective tools in the fight against corruption, he noted that world-wide whistleblowing had become an important and positive tool used for reporting corruption. With the necessary laws in place whistleblowers were increasingly afforded more protection against employers. The positive effect of this was that attitudes against whistleblowers were changing and whistleblowing, at least in the public sector, was becoming generally as acceptable practice and an important one in the fight against corruption. South Africa enacted the Protected Disclosures Act, 2000, to make provision for procedures in terms of which employees, in both the private and the public sectors, may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employment of their employers and to provide for the protection of employees who made disclosures which were protected in terms of the Act from possible occupational detriment.

67. South Africa's legislative framework also covered international cooperation in respect of mutual legal assistance, extradition, transfer of criminal proceedings, joint

investigations through, amongst others, the Extradition Act, the Criminal Procedure Act, the International Co-operation in Criminal Matters Act and the Prevention of Organized Crime Act.

68. Furthermore, in relation to the extradition of persons accused of an offence that was covered by UNCAC, South Africa had extradition treaties with other countries. In a case where there was no such treaty, the UN Convention may be used as a basis for extradition. Mutual legal assistance was also provided for in the Commonwealth Harare Scheme, in relation to investigations, prosecutions and judicial proceedings. South Africa had also entered into bilateral treaties with several countries to provide for mutual legal assistance in criminal matters.

69. Finally, the key challenges of implementation that South Africa had identified were asset recovery, capacity building and mutual legal assistance. The cost of implementation of various anti-corruption initiatives had also been an obstacle for South Africa. South Africa experienced difficulties in providing mutual legal assistance and guidelines for grey areas such as extradition were needed. The lack of capacity among members of the judiciary, prosecutors and investigators in anti-corruption matters also posed a challenge. There existed skills deficit in areas such as asset tracing and recovery. There was a need for the involvement of the private sector in the implementation of obligations.

70. The delegate noted that when tackling corruption and money laundering, there was a need for the harmonisation of mutual legal assistance legislation in order to enable speedy and effective cross border cooperation. The enhancement of cooperation, special investigative techniques, good channels of communication and information exchange was also required. The importance of personal contact between officials in cooperating countries to create a climate of trust could not be overemphasized.

71. The **Delegate of the State of Kuwait**[3] said that combating corruption was a very serious issue and a step on the right path. Corruption had started to spread in the international community in different forms and using different methods. He noted that States had to follow a comprehensive method and close international cooperation in order to combat corruption, because corruption was not a local matter, but was a phenomenon that influenced all communities and economies. Fighting and preventing corruption was the responsibility of all countries. All countries that acceded to international organization had to abide by the Convention on Combating Corruption and Convention on Transnational Organized Crime.

72. The State of Kuwait, at the national level, had mobilized all means to fight corruption and to increase transparency, integrity, and passing of laws and acceding to international conventions. It was worth mentioning that the State of Kuwait had ratified the United Nations Convention against Corruption and according to Law 47 of 4 December 2006 and was party to this Convention. Also Kuwait had signed the Convention for Combating

[3] Statement delivered in Arabic. Unofficial translation from the Interpreters' version.

Transnational Organized Crimes and two Protocols annexed to it and the provisions of such conventions was a law to be enforced in Kuwait.

73. The delegate noted that in order to protect public money, Kuwait was fighting corruption in different forms and was criminalizing and punishing those perpetrators who were giving bribes to the civil servants, embezzlement of properties, trafficking in human being and abuse of jobs, and impeding justice. Also the State of Kuwait had passed a special law for combating money laundering and considered money laundering as a crime and all governmental authorities and financial institutions had the responsibilities to fight such crimes. In addition, confiscating of money resulting from money laundering had been criminalized. The domestic laws in the State of Kuwait had provisions relating to the acts of the civil servants in procurements and public money. Also Kuwait had established regulatory bodies in order to prevent and combat corruption, like for instance, accountability of the Central Bank, the customs, the Police, the Interior Ministry could combat corruption. Also the Cabinet had passed Decree No. 942 that included an agreement to establish projects concerning these authorities, that the civil servant, according to Article 26 was to abide by the laws and that they could not have a public job and indulge in commercial activities either in his name or proxy and this included all those who were on high posts in the country. All Ministries would provide to the Ministry of Industry and Ministry of Justice the names of all officials who were working on leadership posts each year and the Minister would notify if any person was practicing any commercial job in addition to his government position. There was a budget to coordinate with the technical bureau of the Ministry of Justice in order to place statements to be signed.

74. The delegate noted that in order to encourage reporting against any corruption, the Ministry of Interior compiles the crimes of corruption, bribery etc., in order to be able to receive reports pertaining to these crimes and investigate and make sure that the information it received be referred to the judicial authority. All government agencies were required to cooperate with the bureau to serve the citizens and follow-up in whatever practices were taken and procedures concerning information it received pertaining to corruption, including the actions taken against such reports for those to be discovered to commit corruption.

75. The Ministry of Information was cooperating with other authorities to have a major campaign and disseminate information about the menace and threats of corruption so that all the citizens knew the way to identify and report any crime of corruption. The Ministry of Finance was providing financial means for this purpose. The State of Kuwait was also actively involved with the civil society to combat corruption. The State of Kuwait was looking forward to have cooperation between different countries of the world, particularly those who were parties to the UN Convention against Corruption to enforce and realize its objectives in order to ensure the safety and prosperity of countries.

76. The **Delegate of Republic of Kenya** noted that the biggest obstacle to economic and social development in the developing States had been the massive looting of their public resources through corruption. It was for this reason that the Government of Kenya had placed a very high premium on the fight against corruption. It was at the very top of its priorities since Kenya had a vision of eradicating poverty and creating a democratic, prosperous and corruption-free Kenya.

77. Kenya demonstrated the will to fight corruption by being the first country to sign and ratify the UN Convention against Corruption during the High- level Political Conference held in Merida, Mexico from 9 to 11 December 2003. Kenya had acceded to the United Nations Transnational Organized Crime Convention and was also a State party to the African Union Convention on Preventing and Combating Corruption, which it ratified in February 2007.

78. The delegate informed that the approach of the Government of Kenya in the fight against corruption was based on five main fronts:

1. The enactment of the necessary legislation to establish a legislative framework on which to anchor the war on corruption. This had led to the enactment of the Public Officers Ethics Act, Economic Crimes Act to supplement the other penal legislations.
2. Enforcement of anti-corruption laws through investigation of offences of corruption and economic crimes as well as asset tracing and recovery exercise on all corruptly acquired assets.
3. Identification and sealing of corruption avenues by way of establishing effective public sector management controls.
4. Nationwide Public education aimed at stigmatizing corruption and inducting behavioural change, and
5. Implementing macroeconomics and structural reforms to reduce the prevalence of corruption by scaling down the role of the public sector.

79. The Kenyan Government's core strategy for fighting corruption had concentrated on creating effective institutions for investigation, prosecution and the punishing of corruption, as well as institutions for prevention and public education. As part of the approach, the Government was continuously reviewing existing provisions governing the conduct of public servants to ensure that they support the effective implementation of the Action Plan. The review addressed issues such as conflict of interest, adherence to relevant codes of Ethics as well as the question of accountability and transparency in the conduct of public affairs.

80. The Government was also engaged in regular dialogue with Parliament, the private sector, the civil society and the International Community with regard to anti corruption campaigns.

81. The biggest challenge to developing countries such as Kenya was tracing and recovery of the proceeds of crime. Asset tracing and recovery efforts were impossible without international collaboration.

82. The delegate noted that Kenya also recognized the sophistication and cross-border dimension of corruption, hence understood that the municipal legislative and administrative measures may not be adequate in so far as eradicating corruption was concerned. It was for this reason that Kenya lauded measures taken to enhance international cooperation.

83. Corruption networks permeated all aspects of social, economic and political processes. It was one of the greatest development challenges facing the States today. Corruption was thus not merely a matter of law, crime and punishment but a complex social, political, economic, moral and cultural problem, which required fundamental change in attitudes and behaviour. There ought to be a social transformation to create a new culture of integrity and rejection of corruption.

84. The delegate felt that AALCO's international expertise and technical assistance could help in the area of anti-corruption transitional justice. The magnitude, complexity and pervasiveness of corruption could overwhelm, and was likely to stretch the resources of anti corruption commissions to the limits.

85. The continuing contradiction in transition anti-corruption strategies was whether the scarce resources should be invested in creating a better future or expended in digging up the rotten past.

86. The **Delegate of the People's Republic of China** said that their delegation wished to take this opportunity to exchange views with Asian-African countries, on international cooperation against corruption, especially on how to effectively implement the United Nations Convention against Corruption.

87. The delegation was delighted to see that, in no more than 3 years since the Convention entered into force on 14 December 2005, the contracting parties had increased to 93 States, and the First Conference of States Parties of the Convention was successfully convened in Jordan in December 2006. The Chinese delegation held that one of the important missions in international anti-corruption cooperation at the current stage was to make full use of the international cooperation mechanism prescribed in the Convention, such as legal assistance, extradition, law-enforcing cooperation and asset recovery, to enhance cooperation among member States in punishing corruption criminals and recovering assets related to corruption.

88. Both legal assistance and extradition were important tools to combat cross-border corruption crimes. The Chinese government had worked to conclude treaties on mutual legal assistance and extradition with other countries. Up till now, China had concluded treaties on mutual legal assistance with more than 40 countries and on extradition with 30 countries. China hoped to strengthen the cooperation with Asian-African

countries in the field of mutual legal assistance and extradition.

89. Asset recovery was an important content of international anti-corruption cooperation; it was also a unique legal framework setup by the UN Convention Against Corruption. It was China's view that, given the complex legal procedures on asset recovery stipulated in the Convention, and the fact that judicial practice in asset recovery under the Convention was insufficient because of the short period of time since the Convention entered into force, the specific implementation of the legal framework on asset recovery depended, to a large extend, on how compatible relevant domestic laws were with the provisions of the Convention. The delegation called on all States Parties to strengthen political will on cooperation, overcome the legal obstacles between the requesting States and the requested States, and take measures to prevent the criminals from abusing the judicial procedures of the State they hide in to evade extradition and shelter illegal asset.

90. The UN Convention against Corruption established the principles to guide countries in their joint fight against corruption. With the entry into force of the Convention and the successful convening of the First Conference of States Parties of the UN Convention against Corruption, effective implementation of the Convention had become the focus of attention of States Parties and the international community. The delegate noted that at the current stage, the most important work was to increase technical assistance to developing States, enhance communication and cooperation among States Parties, and to gradually establish implementation mechanism which best fitted the UNCAC, based on the experiences gained in the process of the implementation.

91. The Chinese delegation reiterated that the Chinese government was resolute in combating corruption, and its position on strengthening international anti-corruption cooperation was clear-cut. The delegate assured that China would work with the international community, do its part for the effective implementation of the Convention, and work to foster a healthy legal environment for the economic and social development of China and the world at large.

92. The **Delegate of Sudan**[4] said that they believed corruption was the greatest disease among the communities, which impeded the process of development of any State. It had adverse impact on the interests of the citizens as the money used in extending services to the citizens to establish infrastructure and to combat poverty go to the pockets of some people, whether they be government officials or individuals or enterprises, local or international. Besides that this money, which they get through corruption, was easy money, was being used in funding the acts of terrorism and drugs, smuggling, trafficking women and children and all other forms of crimes.

93. Secondly, definition of corruption in one word was not an easy matter, because all acts of corruption were multifaceted and evolving, and were different from one place to another.

[4] Statement delivered in Arabic. Unofficial translation from the Interpreters' version.

Existing efforts in finding a uniform and comprehensive definition of corruption would be a difficult proposition. The delegation felt that one should set aside the matter of definition of corruption and the law should criminalize acts of corruption such as misuse and abuse of public money, embezzlement, abuse of office, bribery forging, and not granting immunities to the government employees, which was the most serious forms of corruption. This corruption was not only practiced in the mechanism of the States but also spreads to the private sector as well.

94. The delegate informed that the Sudanese law since 1995 had enshrined many provisions to combat corruption and provided for punishment. In addition, the Constitution of Sudan commits all the constitutionally responsible officials to present adequate report of the money they get before entering into public service. It was imperative that every State should shoulder its responsibility in combating corruption through legislations and reviewing of administrative matters of the State and encourage rule of law in police, ministers and courts and increase their capabilities and training and should include subject of combating corruption in all curriculums.

95. The delegate felt that the efforts to combating corruption should not be confined to individualistic efforts of the countries but there should be cooperation among all the countries though the exchange of data, knowledge and expertise and should conclude bilateral agreement in order to extradite convicts and mutual legal cooperation in criminal matters in order to combat this phenomenon. Asset recovery for the countries and third world countries in particular, should be given much attention. There was a need to accept the sentences on asset recovery passed by courts of third world countries and implement these judgments. So it was imperative that the AALCO should request the countries in western Europe and America to provide the developing countries with the names of firms and institutions and individuals which had been condemned in these courts for practicing corruption and also implement the sentences passed by the courts against these firms and share other knowledge and information in order to help developing countries deal with this practice and protect public money and protect the rights of their people and country.

96. The **Delegate of the Kingdom of Saudi Arabia**[5] confirmed that corruption was one of the multinational crimes, which could not be combated in the local or international level alone. Hence in the Constitution of the Kingdom based on the Holy *Quran,* the *Sunnah* of the Holy Prophet, provides for combating corruption according to *Shariah* that had been adopted more than 1400 years ago, according to the will of the Almighty who stood against corruption and said "Do not corrupt in the world" and the Prophet had condemned corruption and prohibited taking and giving bribe. The Kingdom had adopted laws to combat corruption more than fifty years ago. For example, the law for combating bribery, forgery, embezzlement and one of the most modern law was the Money Laundering Law 2003 and the National Strategy for

[5] Statement delivered in Arabic. Unofficial translation from the Interpreters' version.

protecting Integrity and Combating Corruption 2007.

97. The delegate observed that Islam condemns corruption in all its forms and the courts were implementing it in *Shariah*. The Kingdom of Saudi Arabia believed that the Member States of AALCO needed urgently to strengthen awareness among them and this would take place only after confirming that there is Penal Code at all levels against corruption to be included in the laws of their countries that would lead to decisive measures in combating corruption. The delegate also noted that the Kingdom was one of the first countries to ratify the United Nations Convention against Corruption.

98. The **Delegation of Malaysia** in its statement submitted to the Secretariat reiterated its support for the international instruments on corruption, in particular the UN Convention against Corruption and the UN Convention against Translational Organized Crime. Malaysia believed that if the multidisciplinary approaches advocated by these Conventions were adopted and implemented collectively, the global community will achieve substantial advances in its effort to combat corruption.

99. The entry into force of the UN Convention against Corruption on 14 December 2005, just 2 years after its adoption in Merida, Mexico on 9 December 2003 was a truly remarkable achievement and was a record of the nations' commitment to overcoming corruption. The delegation echoed the call of the United Nations and the AALCO for States to expedite their ratification processes so that this Convention may join the other landmark instruments of the United Nations to achieve universal adherence.

100. Malaysia implemented its international obligations to combat corruption and money laundering under the UN Convention against Corruption (UNCAC) and Article 8 of the UN Convention against Transnational Organized Crime (UNTOC) primarily through the Anti-Corruption Act 1997 [Act 575] and the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [Act 613].

101. Malaysia had an independent Anti-Corruption Agency established under the Anti-Corruption Act 1997 as well as a Financial Intelligence Unit established under the Anti-Money Laundering Act 2001 as required by the UNCAC. The Anti-Corruption Act 1997 criminalized the offences prescribed under Article 8 of the UNTOC and most of the offences under the UNCAC. However, amendments were being made to specifically criminalize the offences under Article 16 of the UNCAC (Bribery of foreign public officials and officials of public international organizations) as those terms were defined in Article 2 of the UNCAC. In addition, Malaysia was proposing comprehensive new legislation for the protection of witnesses as required in Article 32 of the UNCAC.

102. Malaysia was able to execute asset recovery for proceeds of corruption under the existing provisions of the Anti-Corruption Act 1997 whether or not there was a conviction on the corruption offence. Malaysia was also able to assist foreign States in asset recovery under the Mutual Assistance in Criminal Matters

Act 2002 [Act 621] (MACMA) through temporary restraint orders and the enforcement of foreign forfeiture orders. The other mandatory requirements of the UNCAC and UNTOC as well as certain non-mandatory and optional obligations were also adequately implemented under existing law and administrative measures.

103. Malaysia was currently engaging interested countries to conclude a comprehensive network of treaties extradition and mutual assistance in criminal matters to enhance its ability to combat transnational crime, including corruption. Presently, Malaysia has extradition treaties with Thailand, Indonesia, Hong Kong, the United States of America and Australia. Malaysia also has bilateral mutual assistance in criminal matters treaty relations with Australia, the United States of America and Hong Kong.

104. In June 2003, Malaysia initiated the negotiation of a multilateral region-wide Treaty on Mutual Legal Assistance in Criminal Matters with like-minded ASEAN Member Countries. This Treaty was successfully concluded on 29 November 2004 with 8 Signatory States. Myanmar and Thailand completed the signature process of the Treaty on 17 January 2006. The Treaty was now in force among Malaysia, Singapore, the Socialist Republic of Vietnam, Brunei Darussalam and Lao PDR with effect from the respective dates of ratification of the Treaty.

105. In addition, Malaysia, the Republic of the Philippines, the Republic of Indonesia, the Kingdom of Thailand, the Kingdom of Cambodia and Brunei Darussalam were also party to the Agreement on Information Exchange and Establishment of Communication Procedures. This Agreement was intended to establish and facilitate secure, timely and effective channels for the communication of information pertaining to specified crimes of concern to the parties.

106. Malaysia noted that several issues were highlighted in the AALCO Secretariat paper on this agenda item for the consideration of delegations. These are as follows.

(a) the coordinator of the review mechanism, whether a working group or more permanent body should be established by the UNCAC COP;
(b) the means of monitoring, i.e. whether it should entail questionnaires, country reports, self-assessment, peer reviews, country visits or a combination of one or more such information gathering mechanisms; and
(c) the effect of the negative findings and what actions that the COP would be empowered to take against the non-conforming State Party.

107. On the issue of coordinator, Malaysia was of the view that the Secretariat for the UNCAC should coordinate all matters under the Convention, if necessary with the assistance of an Ad Hoc Working Group. Malaysia was not in favour of the establishment of a new treaty body, which may later begin imposing its own views and standards on States Parties.

108. On the means of monitoring, Malaysia was of the view that the Secretariat should begin with questionnaires as that was the most effective way to focus attention on specific issues or priorities in the UNCAC. As for the lack of response, this was an issue for the Secretariat as it should be more pro-active to ensure that the questionnaires reach the appropriate agencies in the State Party and are not lost in transmission through diplomatic channels. Further it was incumbent for the Secretariat to follow up with non-responding States Parties to identify the reasons thereof instead of trying to lay blame without grounds.

109. On the issue of negative findings reported to the COP, Malaysia was of the view that a mechanism should be put in place with a view to identifying the reasons for providing the necessary technical advice and assistance. Non-compliant States Parties generally require assistance to meet the Convention requirements, not merely constant criticism for not fully complying with the Convention's requirements.

110. Malaysia noted the effectiveness of peer review mechanisms such as the Asia-Pacific Group's Mutual Evaluation Reports, which monitors compliance with the Financial Action Task Force on Money Laundering's 40 Recommendations on Money laundering and 9 Special Recommendations on Terrorist Financing. However this required a review mechanism among equals and was more effective on a regional basis. The UNCAC as a global instrument, would need to establish regional partnerships if such peer reviews were to be carried out effectively.

111. In this regard, it was useful to note the establishment of the International Association of Anti Corruption Authorities (IAACA) on 25 October 2006 with 137 Member Countries including Malaysia and 15 International Organizations. The IAACA's Constitution states that it was established to uphold among others the UNCAC.

112. Malaysia agreed that technical assistance was necessary for the implementation of UNCAC. Malaysia supported the important role of the UNODC in providing to UNCAC States Parties the necessary technical cooperation, advisory services and other forms of assistance in the field of crime prevention and criminal justice, including in the area of prevention and control of corruption.

113. Malaysia took note of the proposed UNCAC workshop concerning donor agencies and legal experts to discuss issues in technical assistance for countries needing help in implementing the Convention and that the Secretariat had been tasked with compiling a needs analysis from States Parties. In this regard Malaysia, through its Anti-Corruption Agencies, had established the Malaysian Anti-Corruption Academy (MACA) to facilitate the training of its officers on anti-corruption measures, including the UNCAC. Malaysia would be prepared to offer similar training to interested AALCO Member States.

114. Malaysia had and continued to use its available resources to combat corruption on all fronts. It also worked

through the Anti-Corruption Agency, with other countries regionally and internationally, to curb corruption through exchanges of visits and best practices, the organization of seminars and workshops and capacity building through the National Integrity Institute and the Malaysian Anti-Corruption Academy (MCA).

115. Malaysia was also looking forward to the next Conference of States Parties of the UNCAC in 2007 at Indonesia. It was also hoped that Member States would utilize the facilities of the AALCO Secretariat to identify and raise implementation issues arising from the UNCAC, and where necessary seek the necessary technical assistance.

116. Malaysia welcomed the proposal for the Secretariat to draft a Model law to assist Member States in their implementation of the UNCAC. In this regard, the Secretariat and Member States may find the Report and Recommendations of the Expert Working Group on Legislative and Related Measures to Combat Corruption prepared and issued by the Commonwealth Secretariat in 2004 to be a useful reference. It would also ensure consistency between the legislative measures being advocated by the various regional initiatives.

117. The **Delegation of Arab Republic of Egypt** handed over to the AALCO Secretariat their statement in Arabic. However, due to time constraint, it was very difficult to translate into English and reproduce its summary. Nonetheless, the full text of the statement would be reproduced in the Verbatim Record of the Forty-Sixth Session after translation.

The Meeting was thereafter adjourned and it resumed at 4:30 PM.

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

C. Message of Thanks to the President of the Republic of South Africa His Excellency Mr. Thabo Mbeki on behalf of the participating delegations in the Forty-Sixth Session of AALCO

1. The **President** invited the **Secretary-General** to read out the Message of Thanks on behalf of the participating delegations to the President of the Republic of South Africa His Excellency Mr. Thabo Mbeki.

2. The **Secretary-General** said it was customary that at the end of the Session to send the message of thanks to the President of the host country. Therefore, the Secretariat had prepared a message, which he could read to the delegates of the Member States and if they agreed to it, he would formally sign it and send it on behalf of the Delegations of the Member States to His Excellency the President of the Republic of South Africa.

MESSAGE OF THANKS TO HIS EXCELLENCY MR. THABO MBEKI, THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

"Excellency,

On behalf of all the Delegations from the Member States of Asian-African Legal Consultative Organization (AALCO) and Observers who participated in the Forty-Sixth Session of the AALCO, I would like to extend sincere gratitude through this message to His Excellency Mr. Thabo Mbeki, the President of the Republic of South Africa. The following message may please be considered as a token of our heartfelt gratitude and respects:

"We, the participants of the Forty-Sixth Session of Asian-African Legal Consultative Organization (AALCO), would like to take this opportunity to profoundly thank with gratitude and appreciation, Your Excellency and through you to your esteemed Government and the people of the Republic of South Africa for magnanimously hosting the Forty-Sixth Session of AALCO in this beautiful city of Cape Town known also as the 'legislative capital' of South Africa and making this event a very successful one.

Your Excellency, I take this opportunity to thank your officials for the support extended in providing wonderful administrative arrangements in an organized and systematic manner depicting true professionalism in their endeavour to hold the Session in the best possible manners in spite of having a very short period for the preparations. Moreover, despite very short notice, your Government agreed to host this Session. Indeed, this Session can be earmarked as an outstanding one because of the ready acceptance of Your Excellency and your Government to prepone the proposal to hold the Forty-Seventh Session in this beautiful and economically fast-moving country.

Your Excellency, the beauty and serenity of this city coupled with the strenuous efforts of your committed officials and grandeur hospitality of your people has helped each one of us present here, especially the officials of AALCO Secretariat in mitigating the week-long Session in a remarkable way. Your Excellency would be pleased to know that this Session was marked by a spirit of constructive dialogue and cooperation among the attending delegations, enabling them to arrive at crucial decisions on substantive and organizational matters of AALCO. While recalling all the factors contributing to the success of the conference, it is significant to profoundly appreciate the exceptional cooperation of the Government of the Republic of South Africa in the outstanding achievements of our deliberations.

Please accept Your Excellency, the assurances of our highest consideration and may the Almighty bless you, the Government and the people of South Africa".

3. The Delegations accorded their consent to the Message of Thanks to the President of the Republic of South Africa. The Secretary-General said that on behalf of all the Member States, he would sign and send it to the President of the Republic of South Africa.

D. Expressions of Folklore and its International Protection

1. The **President** invited the Secretary-General to introduce the agenda item, "Expressions of Folklore and its International Protection".

2. **Amb. Dr. Wafik Z. Kamil, the Secretary-General of AALCO,** introduced the agenda item "Expressions of Folklore and its International Protection", contained in Secretariat Document AALCO/46th/CAPE TOWN SESSION/2007/S 14. The Secretary-General recalled that the topic had been on the agenda of the Organization, since the Forty-Third Session, held in Bali, in 2004. He stated that the report provided an overview of the work of the World Intellectual Property Organization (WIPO) Intergovernmental Committee (IGC) since its inception in 2001, focused its attention on the recently concluded Ninth and Tenth Sessions of the IGC and the documents were circulated at the Sessions for the consideration of the Member States. The report of the AALCO Secretariat also provided a brief overview of the draft policy objectives and core principles for the protection of traditional cultural expressions/folklore and had been annexed to this Report.

3. He stated that the WIPO's IGC, which had so far convened ten sessions, made considerable progress in formulating flexible policy objectives and core principles for the protection of traditional cultural expressions/folklore. The Secretary-General explained that in some of the IGC Sessions in which he had actively participated on behalf of the Member States, the discussions were focused on different options available for States to effectively protect folklore and prevent its misuse. However, he observed that there were many outstanding issues on which the Committee was yet to evolve a consensus, which would be considered at the Eleventh Session of IGC, which was being held from 3-12 July 2007 at Geneva.

4. As regards the Secretariats' report, the Secretary-General elaborated that during the Ninth Session of the Committee the delegates urged the Member States to focus and accelerate discussions with a view to adopting a legally binding instrument. In the Tenth Session, the delegates expressed their concerns on the issue of misappropriation of expressions of folklore. Further, he observed that although there was lack of consensus on the objective of the Committee, namely the adoption of a legally binding instrument, there appeared to be a growing support in this direction. This Session also agreed upon a new approach which adopted a separate set of issues on Traditional Cultural Expressions (TCEs), and would represent a way forward to Member States for further discussion, as it provides a systematic approach to the fundamental policy choices to develop or enhance the protection of expressions of folklore.

5. He recalled that in spite of many differences, both developed and developing countries agreed to move forward on general guidelines and statements of principles for the protection of folklore, as some developed countries (the US and Canada) were unwilling to continue

work on drafting substantive provisions for a possible international treaty.

6. He invited the attention of the developing countries that, despite the fact that it would be extremely unrealistic to expect countries to agree on the substance of the international protection on this issue immediately, it was nevertheless crucial for at least the developing countries, which were the owners of the resources, able to agree among themselves on the best possible protection model.

7. The Secretary-General informed that during his visit to the Sultanate of Oman, he made a proposal of organizing an Expert Group Meeting/Seminar on Expressions of Folklore and its International Protection jointly by the AALCO and the Sultanate of Oman with the cooperation of the UN specialized agencies. His Highness Sayyid Haitham bin Tariq al Said, Minister of Heritage and Culture had readily welcomed the proposal in principle. Further, he said that the details of the Meeting/Seminar would be worked out after the Forty-Sixth Session.

8. In this context, he was of the belief that AALCO could be a suitable forum for further discussion on the protection of folklore and the deliberations at the Session could be focused on; (i) Prevention of the misuse, misappropriation and protection of expressions of folklore, (ii) Establishing an international binding legal instrument to safeguard the rights of expressions of folklore, and (iii) Creating awareness amongst the Member States to utilize the voluntary fund set up by the WIPO for the indigenous communities and other international Organizations to participate in the IGC meeting in the WIPO. This would help in consolidating the position of Asian-African countries on the substantive aspects of the future international instrument for the protection of folklore. He was confident that the joint expert meeting might be held with the cooperation of Sultanate of Oman and could discuss a draft of an International or Regional Legal Instrument to Protect Expressions of Folklore.

9. The **Delegate of the Islamic Republic of Iran** stated that the majority of the AALCO Member States have a rich and remarkable cultural heritage and invaluable Genetic Resources which they wished to protect, while there was no an effective and strong legal mechanism for the protection of Folklore, Traditional Knowledge and genetic resources for preventing and suppressing misappropriations and misuses of them.

10. Although the developments of legal framework for the protection of folklore had been a subject of discussion in some international bodies such as WIPO and UNESCO, these efforts have not culminated into a legally binding instrument for protection of folklore.

11. His delegation believed that the existing IPR regime for the protection of folklore was insufficient for protecting against abuses and misappropriations of Expressions of folklore and Traditional Knowledge and fight against bio-piracy. Thus, he emphasized to find and resolve proper means to face up illicit and unfair exploitation of folklore and traditional knowledge.

12. The delegate observed that the subject of protection of Genetic Resources, Traditional Knowledge and Folklore (GRTKF) had been one of the main concerns of developing countries during the last ten years. With the establishment of the 'WIPO Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore' (WIPO IGC) in 2000, his country had closely observed and actively participated in the WIPO IGC activities. However, WIPO IGC still needed more attention to reach to an acceptable result.

13. The delegate underlined that the Asian and African countries were rich in Genetic Resources, Traditional Knowledge and Folklore. They have shared a common concern over the increasing misuse and misappropriation of GRTKF. Consequently, the international dimension of the protection of GRTKF had become a major concern for all these countries. So, their international cooperation was important for leading the WIPO IGC activities to come up with a tangible result and establishment of an internationally binding instrument/s. He further noticed that their international collaborations were also crucial for tackling the misappropriation of GRTKF and preventing the granting of IPRs without the authorization of GRTKF holders.

14. The delegate observed that the AALCO with representation from a large number of nations of Asia and Africa and being an intergovernmental legal body, could be an appropriate forum for discussion and deliberation on the protection of GRTKF. It would help in consolidating and harmonizing of the Asian-African country's position on the substantive aspects of the discussion in the UNESCO, UNEP, WHO, WTO and in particular WIPO. In this regard, he stressed that the principle of prior informed consent and benefit sharing should be recognized and applied while considering of negotiating the relevant international instruments.

15. The **Delegate of the Sultanate of Oman** stated that "Folklore" had been defined as "the body of expressive culture, including tales, music, dance, legends oral history, proverbs, jokes, popular beliefs, customs and so forth within a particular population comprising the traditions (including oral traditions) of that culture, sub culture or group. It was also the set of practices through which those expressive genres are shared". Expressions of folklore cover many forms of folkloric expression: Folk songs, stories, dances and art for example. Developing countries had traditionally given more importance to these expressions of folklore as they form an integral part of their cultural identity.

16. The delegate stated that Oman was one such country that places much importance on expressions of folklore and actively encouraged its preservation as part of its culture and heritage. Early on, with the dawn of the Renaissance, her country was at the forefront of Arab countries that established a specialized ministry concerned with matters of culture and heritage, the Ministry of Culture and Heritage. Royal Decree 6/80 issued a law on Protecting National Heritage. She said at the international level, Oman most recently joined the Convention on the Protection and Promotion of the Diversity of Cultural Expressions earlier this year. It had also joined a number of international legal instruments concerned with the protection of culture and heritage including the Convention for the Safeguarding of the Intangible Cultural Heritage in 2005, the Convention concerning the Protection of the World Cultural and Natural Heritage in 1981 and the Convention on the Means of Prohibiting and Preventing the illicit Import, Export and Transfer of Ownership of Cultural Property in 1977.

17. She informed that on the national front, Oman had actively encouraged preserving expressions of folklore. In 1984, the Ministry of Information established the Oman Centre for Traditional Music to preserve its traditional music. The Centre took on the role of promoting and publicizing Oman's musical tradition regionally and internationally. It also primarily documents Oman's musical traditions, including photographs, audiovisual media and sound recordings and provides their use for research. Recordings were even used to teach music in schools in an effort to introduce school children to a part of their culture from a young age. Another entity, the Public Authority for Craft Industries, was concerned with protecting Oman's traditional crafts and reviving its industry. It provided training to craftsmen in the different regions of the country as well as offering them technical support.

18. She observed that with the advent of technological advances, however, serious concerns for the misuse of expressions of folklore were raised, and in an effort to prevent the distortion of these folkloric expressions and their possible eventual loss, efforts were made to provide adequate protection to expressions of folklore using legal instruments already in place. Protection by copyright was an obvious, initial solution as some expressions of folklore can be categorized as literary and artistic works and would therefore attract protection under various provisions, for example Article 15(4) of the Berne Convention for the Protection of Literary and Artistic Works. There were clear inadequacies with that, however, as firstly, in order for

a work to attract copyright protection, its author must be known. In case of many expressions of folklore, it was not the case as their authors were anonymous and these expressions were passed down from generation to generation. Secondly, copyright gave its author the exclusive right to exploit the work before it was available in the public domain, whereas expressions of folklore were already in the public domain. Different intellectual property rights such as trademarks, industrial designs and geographical indications also provided some level of protection but were felt to be generally lacking.

19. She noted that the numerous difficulties with current legal instruments providing adequate protection to expressions of folklore stressed the need for a *sui generis* right on this matter. A first attempt at this was in the form of the WIPO/UNESCO Model Provisions for National Laws on *sui generis* Protection of Expressions of Folklore, which intended to be incorporated into national legislation.

20. In her concluding remarks, she stated that the efforts were still being made to find an instrument devoted to the protection of expressions of folklore. It was important however, to allow room for different countries to take into consideration their own culture and other issues important to them when affording this protection, perhaps by laying down guidelines and model provisions rather than strict rules.

21. The **Delegate of the Republic of Indonesia,** at the outset, congratulated the Secretary-General of AALCO on behalf of her delegation for including the "Expressions of Folklore and its International Protection" on the agenda of its Forty-Sixth Session. She said that this forum would be benefited from such exercise in further discussing issues related to the possible international protection of folklore.

22. The delegate observed that WIPO and UNESCO had been active in the field of folklore over the past three decades, including the launching of a joint Model Provisions that provides "*sui generis*" model for intellectual property-type protection of traditional knowledge-related subject matter. In this light, her country closely observed the work conducted by the Inter-Governmental Committee (IGC) under the aegis of WIPO to explore the proper mechanisms for the protection of genetic resources, traditional knowledge, and expression of folklore.

23. In the same vein, She wished to share their experiences in this field. As an archipelagic country composed of more than 17, 504 islands, Indonesia was endowed with

vast natural resources and cultural heritage. It had more than two hundred and twenty million people comprising of ethnic and sub ethnic groups that spoke about approximately 731 dialects. Such diversity coupled with a long cultural history was certainly a great and valuable asset for Indonesia that needed to be protected.

24. For those reasons, her country over the years had great apprehension about the mergence of various types of exploitation of expressions of folklore or "traditional cultural expressions – TCEs" as referred by WIPO IGC. This type of exploitation had been crafted in such a way that gave precedence to development of technology and expansion of business interests over respect to fundamental cultural and economic interests of the concerned community. It was a distressing development that needed utmost attention and immediate actions.

25. The delegate noted that given this fact, her nation exerted continuous efforts to promote protection of TCE, including the inclusion of adequate provisions in the national Copyright law. Indonesia had also established a National Working Group on the Empowerment of Genetic Resources, Traditional Knowledge and Folklore with the aim to study and prepare a national system for the protection of genetic resources, traditional knowledge and folklore. She called for further strengthening the capacity and institution by designing and implementing various effective measures.

26. In line with its commitment, her country had hosted "the Asian African Forum on the Protection of Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources" in Bandung on 18-20 June 2007. The important forum had passed the "Bandung Declaration" that reaffirmed the need of national, regional and international efforts to preserve protect and promote the Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources. In this regard, they encouraged the Member States of AALCO to conclude bilateral and multilateral agreements in the protection of genetic resources, traditional knowledge and folklore.

27. The Declaration also emphasized on the importance of the Asian-African countries to work closely with relevant organizations in regional and international, such as the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore-WIPO for the establishment of an international legally binding instrument on the protection of Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources and take into account the requirements of the disclosure of origin.

28. Furthermore, her delegation hoped that AALCO forum recommends an in-depth study on the exploitation of intangible expressions of folklore. This study was expected to give recommendation on the measures, which could be taken by Members of AALCO in providing effective legal protection for the intangible expressions of folklore.

29. Finally, on behalf of the delegation, it was recommended that Member countries of AALCO could exchange information and have consultations regarding the development of IPR's protection system of expressions of folklore, genetic resources and traditional knowledge.

30. The **Delegation of the Arab Republic of Egypt** handed over to the AALCO Secretariat their statement in Arabic. However, due to time constraint, it was very difficult to translate into English and reproduce its summary. Nonetheless, the full text of the statement would be reproduced in the Verbatim Record of the Forty-Sixth Session after translation.

The Meeting was thereafter adjourned.