

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



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

Prepared by:

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

CONTENTS

I	Introduction	1-2
	A. Background	
	B. Issues for Focused Consideration at the Forty-Ninth Session of AALCO	
II.	Salient Features of the UN Convention Against Corruption [UNCAC]	2-5
	A. Preventive Measures	
	B. Criminalization and Law Enforcement	
	C. Asset Recovery	
	D. International Cooperation	
III.	Developments Since the Entry into Force of the UNCAC	5-13
	A. First Conference of State Parties to the UNCAC, 10 to 14 December 2006.	
	B. Second Conference of State Parties to the UNCAC, 28 January to 1 February 2008.	
	C. Third Conference of State Parties to the UNCAC, 9 to 13 November 2009.	
	1. Review of the Implementation of UNCAC	
	2. Expert Consultations on Prevention of Corruption	
	3. Expert Consultation on Criminalization	
	4. Expert Consultation on International Cooperation	
	5. Action Taken by the Conference	
	D. Venue for the Fourth and Fifth Session of Conference of State Parties	
	E. Sixth Global Forum on Fighting Corruption and Safeguarding Integrity	
IV.	Comments and Observations of the AALCO Secretariat	13-14
V.	Annexures	15-18
	I: Participation of AALCO Member States in the UNCAC	
	II: Draft Resolution on the agenda item “Challenges in Combating Corruption : The Role of the United Nations Convention Against Corruption” for Consideration at the Forty-Ninth Annual Session of AALCO	

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

I. INTRODUCTION

A. Background

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

2. It was at this stage that AALCO had joined itself with the workings of the Ad Hoc Committee with the aim of influencing the negotiation process by giving the common concerns of the Asian-African States to it. AALCO’s concerns were well in tune with the reality that corruption, though found in all countries, big and small, rich and poor, is a massive problem in developing societies.

3. The Ad Hoc Committee held seven Sessions to successfully complete the negotiations and the United Nations Convention against Corruption [UNCAC or the Convention, hereinafter] was adopted through consensus by the General Assembly in October 2003. The UNCAC, which came into force in 2005 and has got 145 State Parties to it, is a powerful weapon in the armoury of the international community in its fight against corruption. The AALCO has been regularly deliberating on various aspects of the UNCAC during its Annual Sessions, with the objective of promoting the domestic implementation aspects of the UNCAC in its Member States. It has also been very vocal in promoting the cause of the UNCAC by adopting resolutions at its Annual Sessions encouraging its Member States to ratify the Convention. It needs to be mentioned here that the UNCAC contains a mechanism for implementation, in the form of a *Conference of the State Parties* (CoSP) with a Secretariat that is charged to assist it in the performance of its functions.

4. The First Session of the CoSP to the UN Convention against Corruption was held from December 11 to 14, 2006 at Amman, Jordan and the Second Session of the CoSP to the UNCAC was held in Nusa Dua, Bali, Indonesia, from 28 January to 1 February 2008. The Third Session of the CoSP to the UNCAC took place at Doha from 9 to 13 November 2009, with the specific agenda of creating a mechanism to review the implementation of the UN Convention against Corruption.

5. This Secretariat Report, after providing a brief overview of the salient features of the UN Convention against Corruption focuses on the deliberations that took place at the Third Session of the Conference of State Parties to the UNCAC at Doha in November 2009. It highlights the successful adoption of the Review Mechanism for the implementation of the UNCAC, established at this Conference with its modus operandi. It also gives a brief input on the other issues that were deliberated during the conference. It concludes with the comments of the AALCO Secretariat on the recent developments and its implications.

B. Issues for Focused Consideration at the Forty-Ninth Annual Session of AALCO

a. *To identify precisely the obstacles to the successful implementation of the UN Convention against Corruption; and*

b. *To examine the main components of the review mechanism established at the Third Conference of State Parties (that took place in November 2009) for the implementation of the UNCAC, and the broader obligations that it imposes on the State Parties to the Convention.*

II. SALIENT FEATURES OF THE UN CONVENTION AGAINST CORRUPTION

6. The UN Convention against Corruption follows a number of international conventions which have been adopted under the auspices of various intergovernmental organizations, including the Organization for Economic Cooperation and Development (OECD), the Council for Europe, the Organization of American States and the European Union. While these initiatives were important as they were, it must be noted that the UNCAC is the first truly global instrument against corruption and the most comprehensive of all. The UNCAC is unique not only in its worldwide coverage but also in the extensiveness and detail of its provisions which is particularly important for countries not covered by regional conventions.

7. It was opened for signature in December 2003 and entered into force in December 2005. There are 145 States Parties to the Convention. This part of the Report focuses on the salient features of the UNCAC¹ with the belief that prospects for effective and coherent implementation of UNCAC will largely depend on the commitment of a multitude of actors in those countries which are Parties to it. Hence, the main components of the UNCAC need to be known by all the actors involved.

8. The UNCAC provides a comprehensive and coherent framework for domestic, international and regional action against corruption. Even though it contains concrete

¹ A comprehensive overview of the UNCAC has been prepared by the AALCO Secretariat which could be found in its official documents nos. AALCO/43/Bali/2004/S.12; AALCO/44/Nairobi/2005/S.12; AALCO/45/New Delhi/2006/S.12; AALCO/46/Cape Town/2007/S.12; AALCO/47/New Delhi/2008/S.12; AALCO/48/Putrajaya/2009/ S.12; See also, “*Combating Corruption: A Legal Analysis*” [2005] and “*Rights and Obligations Under the United Nations Convention Against Corruption*”[2006] , published by AALCO Secretariat.

provisions which require States Parties to put in place measures, rules and regulations for establishing the structures to prevent corruption and the tools for implementing an effective regime, the gist of the Convention can be narrowed down to four pillars – preventive measures, criminalisation and law enforcement, asset recovery and international co-operation.

A. Preventive Measures

9. Corruption can be prosecuted after the fact, but first and foremost, it requires prevention. Under Article 5 of the Convention, each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, co-ordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

10. Chapter II of the Convention comprising Articles 5 to 14, comprehensively deals with the preventive measures of corruption. This chapter includes provisions for preventive anti-corruption policies, practices, and establishment of preventive anti-corruption body or bodies. It also includes provisions for efficiency, transparency, codes of conduct and merit based recruitment of public servant. This chapter also formulates the guidelines for transparency and accountability in matters of public services and public finance. It also elaborates specific requirements for the prevention of corruption, especially critical areas of the public sector, such as the judiciary and public procurement. The Convention calls on countries to promote actively the involvement of non-governmental and community-based organisations, as well as other elements of civil society, and to raise public awareness against corruption. Apart from these this chapter provides specific measures to prevent money laundering.

B. Criminalization and Law Enforcement

11. Chapter III of the UNCAC entitled ‘Criminalization and Law Enforcement’, comprising Articles 15 to 59, mandates the making as criminal offences - bribery of national public officials, bribery of foreign public officials and officials of public international organisations, embezzlement, misappropriation or diversion of public property, trading influence, abuse of functions, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, laundering of proceeds of crime, concealment, obstruction of justice, including the participation in and attempting, with knowledge, intent and purpose, of any such offence set out in the Convention - defining the liability of persons for such offences and the criminal or non-criminal sanctions, including monetary sanctions, extending statute of limitations where an offender has evaded the administration of justice.

12. The Convention goes on to define the ‘laundering of proceeds of crime’, as a criminal offence, including conversion or transfer of property, for concealing or disguising the illicit origin, including helping any person in such act, concealing and disguising the nature etc., of the property knowing that such property is the proceeds of

crime, or knowingly receiving such property; or associating with, conspiring, attempting, aiding, abetting, facilitating or counselling, the commission of any such offence. Convention stipulates in detail the components of these offences.

C. Asset Recovery

13. Chapter V of the UNCAC comprising Articles 51 to 59, declares explicitly asset-recovery as "a fundamental principle of the Convention". The substantive provisions then set out a series of mechanisms, including both civil and criminal recovery procedures, whereby assets can be traced, frozen, seized, forfeited and returned. A further issue was the question of whether assets should be returned to requesting State Parties or directly to individual victims if these could be identified or were pursuing claims. The result was a series of provisions which favour return to the requesting State Party, depending on how closely the assets were linked to it in the first place.

14. Thus, funds embezzled from the State are returned to it, even if subsequently laundered, and proceeds of other offences covered by the Convention are to be returned to the requesting State Party if it establishes ownership or damages recognised by the requested State Party as a basis for return. The chapter also provides mechanisms for direct recovery in civil or other proceedings (Art. 53) and a comprehensive framework for international cooperation (Art. 54-55) which incorporates the more general mutual legal assistance requirements, *mutatis mutandis*.

15. This is an important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the development of states. This chapter incorporates provisions for prevention and detection of transfers of illicitly acquired assets, the recovery of property, and the return and disposition of assets.

D. International Co-operation

16. Chapter IV of the Convention comprising Articles 43 to 49 is dedicated for international co-operation. State Parties shall where appropriate, and consistent with their domestic legal system, consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption. Parties are bound to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders and transfer of sentenced persons. State parties are also required to undertake measures that will support the tracing, freezing, seizure and confiscation of the proceeds of corruption. Article 43 says "In matters of international co-operation, 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".

17. Besides these important areas, the UNCAC also contains, as we have mentioned already, a robust mechanism for its implementation, in the form of a *Conference of the States Parties* [CoSP], with comprehensive terms of reference already specified in the Convention and with a Secretariat that would be charged to assist it in the performance of its functions.

III. DEVELOPMENTS SINCE THE ENTRY INTO FORCE OF THE UN CONVENTION AGAINST CORRUPTION

A. First Conference of the State Parties to the UNCAC (Amman, Jordan, 10-14 December 2006)

18. It could be noted here that Article 63 (2) of the UNCAC mandates that the Secretary-General of United Nations shall convene meeting of the Conference of the States Parties not later than one year following the entry into force of the Convention. Accordingly, the first Conference of the States Parties to the UN Convention against Corruption was convened at Amman, Jordan from 10 to 14 December 2006.

19. Among other things, the First CoSP to the United Nations Convention against Corruption agreed “that it [was] necessary to establish an appropriate and effective mechanism to assist in the review of the implementation of [UNCAC]²”. It decided to establish an *open-ended intergovernmental expert working group* on monitoring and requested this working group to make recommendations to the Second Conference.

B. Second Conference of the States Parties to the UNCAC (Nusa Dua, Indonesia, 28 January-1 February 2008)

20. During this Conference, the Executive Director of the UNODC, Antonio Maria Costa urged countries to put into action the strong measures called for in the Convention. He stressed “corruption hurts us all, therefore fighting it is a shared responsibility – we all have a duty and the power to say ‘no’ to corruption”. Mr. Widodo A.S. Indonesia’s Coordinating Minister for Political, Law and Security Affairs (speaking on behalf of President Susilo Bambang Yudhoyono), underlined the need to develop a culture of integrity throughout society, describing corruption as “an unmitigated evil that every citizen must help eradicate wherever it is encountered³”.

21. The representative of Pakistan, speaking on behalf of the Group of 77 and China, highlighted the importance of technical assistance as an integral part and cross-cutting issue of the Convention. He noted that the provision of technical assistance should not be made subject to conditions and should be based on mutual benefit, respect for diversity

² See, for complete details: United Nations, *Report of the Conference of State Parties to the United Nations Convention against Corruption on its First Session*, held in Amman from 10 to 14 December 2006, CAC/COSP/2008/12.

³ See, for complete details: United Nations, *Report of the Conference of the State Parties to the United Nations Convention against Corruption on its second session*, held in Nusa Dua, Indonesia, from 28 January to 1 February 2008: CAC/COSP/2008/15.

and effectiveness. The representative emphasized that a core priority of the Conference should be to ensure the availability of sufficient and stable funding for technical assistance.

22. As regards asset recovery, he stressed the need to implement fully chapter V of the Convention, in particular its provisions on the return of confiscated assets. In that regard, the establishment of a consultative mechanism for asset recovery, composed of experts possessing proven expertise in disciplines relevant to asset recovery, would strengthen the ability of States to implement the relevant provisions of the Convention and thus improve asset recovery. As regards the review of the implementation of the Convention, he highlighted that the Conference should be the only body responsible for the review and that any mechanism or body to be established should be subsidiary to the Conference. The authority of the Conference should be accepted unequivocally by all the State Parties, he stated.

23. At the second session of the Conference it was noted with appreciation the work of the Open-ended Intergovernmental Working Group on Review of the Implementation of the UNCAC at its meeting held in Vienna from 29 to 31 August 2007. The resolution adopted at the CoSP reaffirmed that the proposed monitoring mechanism should:

- (a) be transparent, efficient, non-intrusive, inclusive and impartial;
- (b) not produce any form of ranking;
- (c) provide opportunities to share good practices and challenges;
- (d) complement existing international and regional review mechanisms in order that the Conference may, as appropriate, cooperate with them and avoid duplication of effort;

24. At its second meeting, the Working Group discussed the challenges in asset recovery practice on the basis of a fictitious asset recovery case. The various problems associated with the process of asset recovery were discussed in detail.

25. The representative of South Africa noted that there were three basic confiscation systems: object-based confiscation and value-based confiscation (both of which took place after a criminal conviction) and non-conviction-based confiscation. Proceedings on fraud, theft or money-laundering were often more successful, especially in situations with poor documentation in the country of origin. The Working Group gave high priority to the availability, creation and management of knowledge on asset recovery. It welcomed the progress made by the Secretariat on the envisaged comprehensive knowledge management centre. The Working Group recommended that such a tool should contain not only legislation but also analytical work, in particular for the better understanding of complex procedural requirements. More clarity on the requirements of procedural law, in particular of requested States, would facilitate cooperation and expeditious cooperation for asset recovery.

C. Third Conference of the States Parties to the UNCAC (Doha, Qatar, 9 to 13 November 2009)

26. The Third Conference of the State Parties to the UNCAC was held in Doha, Qatar from 9 to 13 November 2009. Pursuant to the resolutions and decisions taken by the CoSP at its Second Session⁴, the Third Session was expected to concentrate on key issues regarding the review of the implementation of the UNCAC along with asset recovery and technical assistance. The asset recovery provisions of the UNCAC are particularly dependant on a review mechanism to achieve their objectives. This Session also offered an opportunity to anti-corruption policy makers and practitioners to exchange views on practical matters.

27. At this session, the Conference of the States Parties to the United Nations Convention against Corruption adopted resolution 3/1, entitled "**Review mechanism**"⁵. In that resolution, the Conference recalled Article 63 of the United Nations Convention against Corruption, especially paragraph 7, according to which the Conference should establish, if it deemed it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

28. Each State Party shall be reviewed by two other States Parties. The review process shall actively involve the State under review. As an initial step, each State Party shall provide the Secretariat with the information required by the Conference on compliance with and implementation of the Convention, using the self-assessment checklist developed by the Secretariat. The review team shall carry out a desk review of the responses provided by the State under review to the self-assessment checklist. That desk review shall include an analysis of the responses focused on the identification of normative gaps, as well as of technical assistance and capacity-building needs.

29. All State Parties are subject to review through this mechanism, which will gradually cover the implementation of the entire Convention. Phases and cycles of the review process, as well as the scope, thematic sequence and details of such review, have been established by the Conference. The Conference has also established the number of States parties participating in each year of the review cycle.

30. It needs to be noted here that the country review reports shall remain confidential. The executive summaries of all finalized country review reports shall be translated into the six official languages of the United Nations and be made available as documents of the Implementation Review Group for information purposes only.

⁴ At its meeting held from 25 August to 2 September, the Open-Ended Intergovernmental Working Group on Review of the Implementation of the UNCAC requested the Secretariat to develop, for consideration by the CoSP to the UNCAC at its Third Session, *Draft Uniform Guidelines* for experts reviewing implementation of the Convention.

⁵ See, for the complete details: United Nations, *Report of the Conference of the State Parties to the United Nations Conventions against Corruption on its Third Session, held in Doha, from 9 to 13 November 2009*, CAC/COSP/2009/15. This section of the Report draws heavily from this document.

31. Commenting on the recommendations of the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption, the representative of Islamic Republic of Iran opined that it would be appropriate to make comments only when the terms of reference for the United Nations Convention against Corruption review mechanism are concluded. Nonetheless he added that the draft guidelines should be of binding nature, in that its violation should lead to legal consequences. It should also be endorsed by the CoSP, he added.

32. The representative from Jordan stated that his Country believed that the review mechanism should be approved first followed by the draft guidelines. This was because, it would be difficult to determine the role of the secretariat in the draft guidelines before determining its role in the mechanism, he added.

33. During the general discussions that took place at the CoSP to the United Nations Convention against Corruption the representative of Argentina, speaking on behalf of the States Members of the United Nations that are members of the Group of 77 and China, highlighted the importance of the third session of the Conference for the adoption of the mechanism for the review of implementation of the Convention and reaffirmed that the Group of 77 and China would continue to contribute constructively towards that end. He underscored that such a review mechanism should be constructed in consistency with the requirements of the Convention.

34. He also stressed that any mechanism for the review of implementation should be funded from the regular budget of the United Nations and that it was necessary to streamline efforts to accumulate and disseminate more substantive and comprehensive knowledge on asset recovery issues. In that context, the recommendations of the Open-ended Intergovernmental Working Group on Asset Recovery were a step in the right direction, he added. He also welcomed the recommendations of the Open-ended Intergovernmental Working Group on Technical Assistance and called for the renewal of its mandate, pending a decision on the mechanism for the review of implementation of the Convention.

35. The representative of Angola, speaking on behalf of the States Members of the United Nations that are members of the Group of African States, associated himself with the statement of the Group of 77 and China, reaffirmed the need to establish a mechanism for the review of implementation of the Convention and underlined the importance of technical assistance as a cross-cutting issue and a prerequisite for implementation of the Convention. In that context, he expressed appreciation for the work accomplished by the Working Group on Technical Assistance and supported the extension of its mandate, pending a decision on the mechanism for the review of implementation of the Convention. He also highlighted the key importance of promoting international cooperation to combat corruption, including by strengthening mechanisms for extradition, mutual legal assistance and law enforcement cooperation. He noted that the return of assets derived from acts of corruption was a fundamental principle of the Convention, as stated in Article 51.

36. He stated that in order for chapter V of the Convention to be implemented successfully, there was an urgent need to make the appropriate adjustments to domestic legal frameworks. The representative also noted the challenge of developing and accumulating knowledge and expertise on asset recovery and building mutual trust among practitioners in that field. In that connection, he expressed support for the continuation of the Working Group on Asset Recovery. In the ensuing part of the report, a brief account of what transpired during the Third Meeting on various critical issues is presented.

1. Review of the Implementation of the UNCAC

37. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, the *Mechanism for the Review of Implementation of the Convention*. The Mechanism was established also pursuant to article 4, paragraph 1, of the UNCAC, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

38. The Review Mechanism is an intergovernmental process with the overall goal of assisting States parties in implementing the Convention. The Mechanism shall be applicable to all States parties. Each State party shall be reviewed by two other States Parties. The review process shall actively involve the State Party under review. One of the two reviewing States Parties shall be from the same geographical region as the State Party under review and shall, if possible, be a State with a legal system similar to that of the State Party under review. The selection of the reviewing States Parties shall be carried out by the drawing of lots at the beginning of each year of the cycle, with the understanding that States Parties shall not undertake mutual reviews. The State Party under review may request, a maximum of two times that the drawing of lots be repeated. In exceptional circumstances, the drawing of lots may be repeated more than twice.

39. A State party under review may defer serving as a reviewing State party that same year. That same principle, *mutatis mutandis*, shall apply to the reviewing States parties. By the end of a review cycle, each State party must have undergone its own review and performed a minimum of one review and a maximum of three reviews. Each State party shall appoint up to 15 governmental experts for the purpose of the review process. The secretariat shall, prior to the drawing of lots to select the reviewing States parties, compile and circulate a list of such governmental experts, which shall include information on their professional background, their current positions, relevant offices held and activities carried out and their areas of expertise as required for the respective review cycle. States parties shall endeavour to provide information necessary for the secretariat to compile that list and keep it up to date.

40. According to this scheme, the secretariat would develop a set of guidelines for governmental experts and the secretariat in the conduct of country reviews in consultation with the States parties. The Guidelines shall be endorsed by the Implementation Review Group. The reviewing State parties shall carry out, in accordance with the Guidelines, a

desk review of the response to the comprehensive self-assessment checklist by the State party under review. Such desk review shall entail an analysis of the response focused on measures taken to implement the Convention and on successes in and challenges of such implementation. In accordance with the guiding principles set out in section II and in conformity with the Guidelines, the reviewing States parties, supported by the secretariat, may request the State party under review to provide clarifications or additional information or to address supplementary questions related to the review. The ensuing constructive dialogue may be carried out, inter alia, by way of conference calls, videoconferences or e-mail exchanges, as appropriate.

41. The reviewing States parties shall, in accordance with the Guidelines and the blueprint, prepare a ***Country Review Report***, including an executive summary of the report, in close cooperation and coordination with the State party under review and assisted by the secretariat. The report shall identify successes, good practices and challenges and make observations for the implementation of the Convention. Where appropriate, the report shall include the identification of technical assistance needs for the purpose of improving implementation of the Convention. The country review reports shall remain confidential.

2. Expert Consultations on the Prevention of Corruption

42. Speakers highlighted the importance of preventive measures to address the deep roots of corruption and build a culture of integrity. In that regard, they referred to the pivotal role of anti-corruption bodies and authorities in implementing preventive measures and policies at the national level. Speakers also stressed the need to encourage the involvement of civil society and the media in preventing corruption at the national level. A number of speakers argued in favour of promoting public-private partnerships to prevent corruption. Reference was also made to the need to further promote educational initiatives and campaigns to sensitize the public, including youth, about the risks and problems posed by corruption. Some speakers highlighted the paramount importance of educating youth in order to foster a culture of integrity.

43. Most speakers gave an account of the development of their national anti-corruption strategies and the establishment of bodies entrusted with their implementation. They reported that the main responsibilities of those bodies were anti-corruption policy development, the preparation of legislation and the monitoring of implementation of the anti-corruption strategies. Some States had established a single anti-corruption body, while others assigned those functions to various bodies, in conjunction with the creation of an inter-agency coordination mechanism.

3. Expert Consultations on Criminalization

44. A number of speakers noted the importance of the criminalization and law enforcement provisions of the Convention for creating a comprehensive response to the issue of corruption. They also stressed the need to fully and completely align national legislation with the requirements of the Convention, in particular with regard to the five

offences the criminalization of which is mandatory under the Convention: bribery of national public officials (Article 15), active bribery of foreign public officials and officials of public international organizations (Article 16, para. 1), embezzlement, misappropriation or other diversion of property by a public official (Art. 17), laundering of the proceeds of crime (Article 23) and obstruction of justice (Article 25). They further stressed that implementing these provisions did not involve issues of national sovereignty, as they could all be implemented within the limits of the domestic legislative systems of States parties.

45. Another speaker noted the good practice of criminal sanctions for the liability of corporations and other legal persons, even though Article 26 of the Convention does not require that such legal liability be criminal in nature. The speaker also noted the necessity of creating effective provisions for whistle-blower protection for civil servants within the meaning of Article 33. The importance of not allowing banking secrecy to impede effective investigations of corruption offences, consistent with Article 40, was also noted. The speaker stressed the need to ensure that bribery laws cover all forms of benefits, not just money or securities, in order to fully implement the provisions of Articles 15 and 16.

4. Expert Consultations on International Cooperation

46. A representative of the secretariat defined the framework for the deliberations and highlighted the significance of chapter IV of the Convention and its close interdependence with chapter V, on asset recovery. It was noted that the effective implementation of the provisions of the Convention on mutual legal assistance could further enhance the efficiency of asset recovery mechanisms and foster cooperation for the freezing, seizure and confiscation of assets related to corruption.

47. The interconnection with chapter III of the Convention, on criminalization and law enforcement, was also emphasized, as effective domestic criminal justice regimes and broad criminalization frameworks in line with the requirements of the Convention were prerequisites for effective international cooperation.

48. Speakers were of the view that the investigation and prosecution of corruption could no longer be considered to be confined within national boundaries. They stressed that, with the growth of international travel and improvements in technology and communications, offenders were increasingly mobile and sought to evade justice by crossing international borders or taking advantage of those developments by, for example, planning their offences in one State, carrying out various elements of the offences in other States and ultimately transferring the proceeds to yet other States. They therefore agreed that there was a rapidly growing need to obtain assistance from other countries in bringing offenders to justice, gathering the necessary evidence and confiscating the proceeds of crime and to enhance, improve and streamline international cooperation in order to effectively combat corruption.

49. Several speakers underlined the need for more concerted and efficient international cooperation to combat corruption and reported on national action to

implement the pertinent provisions of the Convention, such as the streamlining of domestic legislation and the conclusion of treaties, agreements or arrangements on different forms of such cooperation, including on the enforcement of foreign confiscation orders and the sharing of proceeds of crime.

5. Action taken by the Conference

50. At its 10th meeting, on 13 November 2009, the Conference adopted a draft resolution entitled “Review mechanism”. Subsequent to the adoption of the draft resolution, the Executive Director of the United Nations Office on Drugs and Crime congratulated the Conference on its adoption of the terms of reference of the Review Mechanism. He urged delegates to brief their colleagues in New York on the crucial importance of securing the required funding for the Review Mechanism. The Executive Director noted that one of the features of the Mechanism would be the identification of technical assistance needs, and he urged States parties to make the delivery of technical assistance a priority. He welcomed the Conference’s work on asset recovery and expressed thanks that the Stolen Asset Recovery (StAR) initiative had pushed that issue forward. He underlined the fact that prevention was a priority, the important role that the next generation had to play, and the need to empower and protect individuals who risked their lives to prevent and fight corruption. He also stressed the important role of the private sector, in particular as the spirit of the Global Forum was to live on in the Conference.

51. At the same meeting, the Conference adopted the revised draft resolution entitled “Preventive measures”. Many speakers referred to the positive contribution of the Open-ended Intergovernmental Working Group on Asset Recovery to building confidence among States Parties, promoting cooperation among them and facilitating the exchange of information and ideas on the expeditious return of diverted assets. In that connection, those speakers supported the renewal of the mandate of the Working Group until the fourth session of the Conference.

52. As regards, technical assistance, a representative of the Secretariat outlined the new approach adopted by the United Nations Office on Drugs and Crime in delivering technical assistance through its regional and thematic programmes, as well as the voluntary contributions pledged and resource requirements for continuing existing initiatives, as described in the discussion paper prepared by the Secretariat.

53. Two panel discussions were held during the deliberations on item. Participants in the first panel discussion considered the role of technical assistance in the development and effective functioning of anti-corruption agencies. Representatives of Argentina, Austria, Haiti, Romania and Rwanda were invited to form part of the panel.

54. The second panel discussion was on South-South cooperation in the fight against corruption. For the second panel discussion, the Secretariat had prepared a background paper. The panelists included representatives of Bangladesh, Brazil, Germany and Kenya. It was underlined by the Panellists and other speakers that it was extremely vital to

promote the exchange of information, good practices and experiences in different areas of implementation of the Convention. To that end, it was suggested that a network of focal points should be established to foster dialogue and trust among States parties. The network could be useful in avoiding duplication of effort and make efficient and effective use of existing resources. Reference was made to initiatives such as the International Anti- Corruption Summer School and the International Anti-Corruption Academy, aimed at promoting academic research and training on anti-corruption issues.

55. Speakers emphasized the need for increased technical assistance initiatives in the four priority areas of the Convention: preventive measures, criminalization and law enforcement, asset recovery and international cooperation. At its 10th meeting, on 13 November 2009, the Conference adopted a revised draft resolution entitled “Technical assistance to implement the United Nations Convention against Corruption”.

D. Venues for the Fourth and Fifth Sessions of the Conference

56. The Conference welcomed and accepted the offer of the Government of Morocco to act as host to the fourth session of the Conference, in 2011, and the offer of the Government of Panama to act as host to the fifth session of the Conference, in 2013.

E. Sixth Global Forum on Fighting Corruption and Safeguarding Integrity

57. Speakers made reference to the sixth Global Forum on Fighting Corruption and Safeguarding Integrity, which was organized by the Government of Qatar at Doha on 7 and 8 November 2009. Speakers commended the ability of the Global Forum to provide a platform for public-private partnerships to prevent and fight corruption and welcomed the wealth of approaches that the event recommended with a view to strengthening the effectiveness of public and private responses to corrupt practices. Speakers took note of the conclusions and recommendations of the event, including the decision to bring to an end the Global Forum series with the successful conclusion of sixth Global Forum.

58. While acknowledging the legacy of the Global Forum, speakers also took note with appreciation of the conclusions of the Global Youth Forum, which, at the initiative of the Government of Qatar, was held parallel to the sixth Global Forum, in Doha on 8 November. The event, which brought together youth between the ages of 14 and 17 from a number of States, underscored the importance of teaching new generations a culture of integrity and intolerance to corruption.

IV. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

59. The true impact of corruption is well-recognized: it distorts development, breeds cynicism among citizens, undermines the rule of law, damages government legitimacy, and violates human rights, especially of the poor. With the adoption and coming into force of the UN Convention against Corruption, the fight against corruption has got a new impetus. The Convention represents an indispensable tool in the struggle against

corruption. The large number of State Parties that this Convention has come to acquire testifies the commitment of the international community of states to root out this evil.

60. The First Conference of States Parties held in Jordan in December 2006 agreed that “effective and efficient review of the implementation of the Convention...is of paramount importance and urgent.” No progress was made at the Second CoSP in January 2008. During the past two years an Inter-Governmental Working Group has sought to develop a consensus on the review mechanism and its terms of reference. However, a small number of governments have been blocking agreement on several critical issues. With the specific aim of creating a credible mechanism to review the implementation of the UNCAC, the Third CoSP was convened at Doha in November 2009. In this meeting, States Parties to the UNCAC were able to agree to a mechanism to monitor the implementation of the UNCAC.

61. Under the new mechanism which has been sometimes termed as the “Doha Mechanism of Implementation”, all States will be monitored every Five years to see how they are living up to their obligations arising under the Convention. Findings, based on self-assessments and peer reviews by experts, will be compiled in country review reports. The executive summary of these reports will be made public. The country reports will identify gaps in national anti-corruption laws and practices. Strengths and weaknesses will also be revealed by a self-assessment checklist based on new software developed by UNODC. This analysis will enable more effective delivery of technical assistance. The importance of achieving this breakthrough has been well captured by the UN Secretary-General who stated that the Doha agreement meant that:

“From now on, States will be judged by the actions they take to fight corruption, not just the promises they make”.

62. Be that as it may, this new mechanism is not without its grey areas. For instance, the new anti-corruption mechanism is permitted to operate in secrecy, in that, the final country reports will remain confidential because only the executive summaries will be published. This simply defies logic since transparency is critical to any fight against corruption. None the less, the adoption of a new review mechanism represents a critical breakthrough in the fight against corruption which would go a significant way in strengthening the provisions of the UNCAC. Given the fact that the review mechanism is of very recent time, it will take some years for us to find out the impact of this mechanism on the fight against corruption.

63. The AALCO urges all its Member States who have not yet ratified/acceded to the UNCAC to do so in the near future so that the Convention could be used as an effective tool in their fight against corruption. It also encourages its Member States, who have not done so, to enact comprehensive domestic laws on anti-corruption strategies so that all the facets of the acts of corruption outlined in the UNCAC could be penalized and dealt with effectively.

ANNEX I

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

Status: Signatories 140, Parties 145 [as of December 2009⁶]

Ratification Status of African Countries:

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

Ratification Status of Asian Countries:

Country	Signature	Ratification (R)/ Accession (A)
Bahrain	S	
Bangladesh		A

⁶ The information contained in this Chart has been taken from the web site of United Nations Office on Drugs and Crime: www.unodc.org/unodc/en/treaties/CAC/signatories.html.

Brunei		R
China P.R.		R
Cyprus		R
India	S	
Indonesia		R
Iran		R
Iraq		A
Japan	S	
Jordon		R
Korea D.P.R.	--	--
Korea, Rep.of		R
Kuwait		R
Lebanon		A
Malaysia		R
Mongolia		R
Myanmar	S	
Nepal	S	
Oman	--	--
Pakistan		R
Palestine	--	--
Qatar		R
Saudi Arabia	S	
Singapore		R
Sri Lanka		R
Syria	S	
Thailand	S	
Turkey		R
U.A.E		R
Yemen		R

Annex II

**SECRETARIAT'S DRAFT
AALCO/RES/DFT/49/S 11
8 August 2010**

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

(Deliberated)

The Asian-African Legal Consultative Organization at its Forty-Ninth Session,

Having considered the Secretariat document contained in No. AALCO/49/DAR ES SALAAM/2010/S 11;

Having heard with appreciation the introductory statement of the Deputy Secretary-General;

Having followed with great interest the deliberations on the item reflecting the views of the Member States and Panelists;

Recalling its resolution AALCO/RES/48/S 11, adopted at the Forty-Eighth Annual Session held at Putrajaya, Malaysia in 2009, which *inter alia* requested the Secretariat to come up with an updated title to the agenda item;

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law;

Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it critical;

Convinced further that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively;

Welcoming the adoption of a new review mechanism for the implementation of the United Nations Convention against Corruption [UNCAC] at its Third Conference of State Parties meeting in November 2009 at Doha;

1. **Condemns** corruption in all its forms, including bribery, money-laundering and the transfer of assets of illicit origin;
2. **Reaffirms** the commitment to make the fight against corruption a priority at all levels and welcomes all actions taken in this regard at the national and international levels, including the adoption of policies that emphasize accountability and transparency in public expenditure and financial management;
3. **Requests** the international community to support the efforts of all countries to strengthen institutional capacity and regulatory frameworks for preventing corruption, bribery, money-laundering and illegal transfer of funds, as well as for the repatriation of those funds to the countries of origin;
4. **Welcomes** the efforts of the Member States that have enacted laws and taken other positive measures in the fight against corruption in all its forms;
5. **Encourages** all Member States that have not yet done so to ratify/accede to the United Nations Convention against Corruption as a matter of priority in an effort to deal with this issue of corruption effectively; and
6. **Approves** the updated title “*Challenges in Combating Corruption: The Role of the United Nations Convention against Corruption*” as proposed by the Secretariat;
7. **Decides** to continue to consider this agenda item and place it on the provisional agenda of the Fiftieth Annual Session.