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AN EFFECTIVE INTERNATIONAL LEGAL INSTRUMENT AGAINST CORRUPTION

I. BACKGROUND AND ISSUES FOR FOCUSED CONSIDERATION DURING THE FORTH-SIXTH SESSION

A. Background

1. In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (resolution 55/25) was desirable; decided to begin the elaboration of such an instrument and requested the Secretary-General to prepare a report analyzing all relevant international instruments and recommendations addressing corruption and to submit it to the Commission on Crime Prevention and Criminal Justice; and requested the Commission, to review and assess the report of the Secretary-General and, on that basis, to provide recommendations and guidance as to future work on the development of a legal instrument against corruption.

2. Pursuant to General Assembly resolution 55/61 (2001), the meeting of Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of a Future Legal Instrument against Corruption was held in Vienna from 30 July to 3 August 2001 and recommended to the Assembly, through the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council, the adoption of a draft resolution on the terms of reference for the negotiation of an international legal instrument against corruption. The draft resolution was subsequently adopted as Assembly resolution 56/260 of 31 January 2002.

3. In its resolution 56/260 (2002), the General Assembly decided that the Ad Hoc Committee should negotiate a broad and effective convention against corruption. In the resolution, the General Assembly requested the Ad Hoc Committee, in developing the draft convention, to adopt a comprehensive and multidisciplinary approach and to consider, *inter alia*, the following indicative elements: definitions; scope; protection of sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation.

4. The text of the United Nations Convention against Corruption was negotiated during seven sessions of the Ad Hoc Committee for the Negotiation of the Convention against Corruption, held between 21 January 2002 and 1 October 2003. The Convention approved by the Ad Hoc Committee was adopted by the General Assembly by resolution

58/4 of 31 October 2003. The Convention was finally opened for signature at the high-level political signing conference in Merida, Mexico in December 2003. As provided in the Convention, the first Conference of State Parties (CoSP) to the Convention on Corruption was held from 11-14 December 2006 at Jordan.

5. Till date, the UNCAC has been signed by nearly 150 countries and ratified by 81. The Conference of States Parties to the UNCAC was to be convened in the year after 30 countries have ratified the Convention that is within 14 December 2006. Accordingly, signatory countries met at the Dead Sea, Jordan from 10 to 14 December 2006 to decide on ways to implement provisions addressing corruption in both the public and private sectors at the national and international levels. The First Conference of the States Parties (CoSP) to the United Nations Convention against Corruption provides a unique opportunity to initiate processes that will energize efforts to implement the Convention and strengthen individual and collective efforts against corruption.

6. The CoSP after five days of deliberation, which came to an end on the 14 December 2006, has invoked mixed response from the different segments of the society. The CoSP was viewed by all with great expectation as it was expected to streamline the framework for the implementation of the Convention, the adoption of which was indeed a milestone. However, the five-day Conference, as the UNODC Executive Director puts it, has not produced a leap forward in making the powerful provisions of the Convention a reality, but some important stage in the right direction has been taken.

7. The most important decisions taken at the CoSP include the plan to establish an effective mechanism to review the implementation of the Convention. The Conference agreed that monitoring was necessary and established a working group with a deadline next year to make recommendations on the specifications of how all countries would track their efforts in fighting corruption and implementing the far-reaching Convention. A new intergovernmental working group was also established to develop a mechanism to locate, freeze, confiscate and return stolen assets to their country of origin. It was also decided that the issues on technical assistance for countries needing help in implementing the Convention would be discussed in a workshop convening donor agencies and legal experts within the next six months.

8. Establishing a review mechanism is a necessity, not an option if the objectives of the Convention are to be realized, without which the Convention would be ineffective. It may be noted that UNCAC Chapter VII "Mechanisms for implementation" particularly Article 63, gives the Conference of States Parties responsibility for considering "any appropriate mechanism or body to assist in the effective implementation of the Convention." Because the issue was controversial during the UNCAC negotiations, the idea of providing a monitoring mechanism was dropped and it was decided to place the item before the first CoSP for appropriate action. While there was an agreement among the CoSP to establish a mechanism during the Conference, no concrete measures were taken in this direction. This has delayed the entire monitoring process by at least one year.

9. Another area that needs urgent attention for the effective implementation of Convention, especially by the developing countries is the need for technical assistance/capacity building. During the Conference, it was indeed recognized that there was a need to provide technical assistance to a larger number of countries, as well as to offer a broader range of technical assistance to meet the growing demand of Member States. However, streamlining the procedure would require strong support from the developed countries and development agencies. As a first measure, information gathering should be initially geared towards identifying specific needs of the States for technical assistance.

10. AALCO urges its Member States that have not ratified the Convention to do so before the next Conference of States Parties in 2007 at Indonesia. Members that have already ratified, it should use their political will to take concrete actions against corruption. AALCO is looking forward to establish closer relationship with the UNODC to initiate joint programmes for promoting wider ratification of the Convention among the Asian-African countries. It is also suggested that AALCO Member States should consider organizing an inter-sessional meeting to discuss the impending issues in the successful implementation of the Convention. Further, the Secretariat also recommends, following suggestions made by some of the Member States at the forty-fourth and forty-fifth Sessions, to establish a Group of Legal Experts from the AALCO Member States to prepare a Model Law in line with the UNCAC, so that the objectives of the Convention could be implemented at the national level.

11. In this context, as mandated by the resolution adopted at the forty-third and forty-fourth Sessions of AALCO, the Secretariat had prepared books *Combating Corruption: A Legal Analysis* (2005) and *Rights and Obligations under the United Nations convention against Corruption* (2006). The intention of these studies was to create awareness among the AALCO Member States and other Asian and African countries as to what the phenomenon of corruption entails for their national and economic development and attempts to provide the salient features of the international anti-corruption instruments developed at the regional and international level. The study also compiles all the relevant anti-corruption instruments/conventions/resolutions/documents adopted by various international and regional organizations. The Secretariat hopes that this study would be a useful reference book for the Member States in understanding and implementing the anti-corruption instruments.

B. Issues for Focused Consideration During the Forth-Sixth Session

i) Mechanism to Review Implementation

The effectiveness of the Convention depends on an effective follow-up mechanism, which the present Convention lacks. During the CoSP, it was decided to establish an effective mechanism to review implementation of the Convention. However, the nature and scope of the mechanism are yet to be determined.

It is suggested that the Member States could express their position and exchange views on the nature and scope of the desirable mechanism for monitoring implementation, taking into account the experience gained under the review mechanisms of relevant international anti-corruption and other instruments.

ii) Technical assistance

For a successful implementation of UNCAC, the need for providing technical assistance/capacity building for the developing countries are widely recognized. The CoSP decided that the issues relating to technical assistance would be discussed in a workshop convening donor agencies and legal experts within six months.

In this context, it is suggested that the AALCO Member States could deliberate upon the problems faced by them in the ratification (for Member States that have not ratified) and implementation (for Member States that have ratified) of the Convention. It would also be fruitful if Member States identify specific areas where it would consider technical assistance most critical and the nature of assistance they may consider appropriate.

iii) Measures for implementation

The discussion would be enriching if the Member States share their experiences and measures adopted by them within their domestic framework to meet the obligations under the UN Convention against Corruption and other relevant anti-corruption instruments.

12. This report provides a brief overview of the developments in the implementation of the UN Convention against Corruption 2003 by the Member States; Report on the First Conference of the States Parties (CoSP) to the UN Convention against Corruption and the main issues which were highlighted during the Conference; summary of the deliberations at the Forty-fifth Session of AALCO held at New Delhi, India, 3-8 April 2006; and the Secretariat comments.¹

¹ A comprehensive overview of the UN Convention against Corruption had been prepared by the Secretariat and could be found in official document nos. AALCO/43/BALI/2004/S12; AALCO/44/NIROBI/2005/S12 and AALCO/45/NEWDELHI/2006/S12. See also “*Combating Corruption:*

II. DEVELOPMENTS SINCE THE ADOPTION AND ENTRY INTO FORCE OF THE UN CONVENTION AGAINST CORRUPTION (UNCAC)

1. Ratification Process

13. The High-level Political Conference held in Merida, Mexico on 9 to 11 December 2003, opened the UN Convention against Corruption for signing and ratification.² The Convention entered into force on 14 December 2005, in accordance with article 68 (1) which reads as follows: “1.This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession.” As on 1 January 2007, the UNCAC has been signed by 140 States and ratified by 81.

14. Of the State Parties who have ratified the Convention, nineteen are AALCO Member States. They are: Arab Republic of Egypt, Cameroon, Peoples republic of China, Jordan, Indonesia, Kenya, Libyan Arab Jamahiriya, Magnolia, Mauritius, Nigeria, Philippines, Senegal, Sierra Leone, South Africa, Sri Lanka, Tanzania, Turkey, United Arab Emirates and Uganda. Many ratifying counties had made a reservation stating that they do not consider themselves bound by the provisions of article 66, paragraph 2 of this Convention, which provides that any dispute between two or more States Parties concerning the interpretation or application of the Convention that cannot be settled through negotiation shall, at the request of one of those States Parties, be submitted to arbitration or to the International Court of Justice.³

2. First Conference of the States Parties to the United Nations Convention Against Corruption (UNCAC)

15. It may be recalled that the United Nations Convention against Corruption (UNCAC) entered into force on 14 December 2005, in accordance with article 68, paragraph 1, of the Convention. Article 63 of the Convention establishes a Conference of the States Parties to the Convention to improve the capacity of and cooperation between States parties to achieve the objectives set forth in the Convention and to promote and review its implementation. Article 63 of the Convention also provides that the Secretary-

A Legal Analysis” (2005) and “*Rights and Obligations under the United Nations Convention against Corruption*” (2006) published by AALCO Secretariat.

² 111 States were represented at the Conference. Apart from States, observers from United Nations Secretariat units, and other entities and specialized agencies of the United Nations system and intergovernmental or non-governmental organization also attended the Conference. Over 18 experts participated in the conference as observers.

³ The following States submitted reservations in accordance with article 66, paragraph 3, stating that they did not consider themselves bound by the jurisdiction of the International Court of Justice: Algeria, Azerbaijan, China, El Salvador, Indonesia, Iran (Islamic Republic of) (signatory), Israel (signatory), Myanmar (signatory), Panama, Qatar (signatory), South Africa, Tunisia (signatory), United Arab Emirates, Viet Nam (signatory) and Yemen.

General shall convene the Conference of the States Parties not later than one year following the entry into force of the Convention.

16. Accordingly the first Conference of the States Parties to the UN Convention against Corruption was held at the Dead Sea, Jordan for 10-14 December 2006. The CoSP was expected to deliberate upon the future of the UNCAC and also to evaluate the progress achieved so far. Around 600 participants, including Ministers, policy-makers, practitioners, parliamentarians and representatives of NGOs and the private sector, attended the Jordan Conference. The agenda before the CoSP include, inter alia,

- Consideration and adoption of the rules of procedure for the Conference of the States Parties;
- Consideration of ways and means to achieve the objectives of the Conference of the States Parties in accordance with article 63, paragraphs 1 and 4-7, of the Convention.
- Technical assistance.
- Consideration of bribery of officials of public international organizations
- Consideration of notification requirements in accordance with the relevant articles of the Convention.

A. Adoption of Rules of procedure for the CoSP

17. In the resolution 58/4 of 31 October 2003, the General Assembly had also decided that the Ad Hoc Committee for the Negotiation of a Convention against Corruption would complete preparing a draft text of the rules of procedure for the Conference of the States Parties and of other rules described in article 63 of the Convention, to be submitted to the Conference of the States Parties at its first session for its consideration. Pursuant to that resolution, the eighth and final session of the Ad Hoc Committee was held in Vienna from 25 to 27 January 2006, during which the text of the draft rules of procedure for the Conference of the States Parties was prepared. During that session, on 26 January 2006, the Ad Hoc Committee approved and adopted the draft rules of procedure.⁴

18. During the Conference, pursuant to article 63, paragraph 3, of the Convention, the Conference of the States Parties adopted the rules of procedure and rules governing the functioning of the activities set forth in paragraphs 4 and 5 of the article, including rules concerning the admission and participation of observers and the payment of expenses incurred in carrying out those activities.⁵

⁴ At its 142nd to 145th meetings, on 25 and 26 January, the Ad Hoc Committee considered all the provisions of the draft rules of procedure for the Conference of the States Parties to the United Nations Convention against Corruption. It based its work on the draft rules of procedure prepared by the Secretariat (A/AC.261/27). Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on its eighth session, held in Vienna on 25 and 26 January 2006, A/AC.261/28.

⁵ *Draft Rules Of Procedure for the Conference of the States Parties to the United Nations Convention against Corruption* (CAC/COSP/2006/3).

B Mechanism to Review Implementation

19. The effectiveness of the Convention depends on the effective follow-up mechanism, which the present convention is lacking. Accordance with article 63 of the Convention, one of the duties entrusted upon the Conference of the States Parties is “to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation”. For this purpose the Conference “shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties”.

20. The Convention, for this purpose, requires the Conference of the States Parties to

- acquire the necessary knowledge of the measures taken by States parties in implementing the Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference.
- each State party to provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures
- implement the Convention, as required by the Conference.
- establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

21. In the context, a note prepared by the UNODC Secretariat recommended that it was necessary for the Conference to focus only on some provisions, or sets of provisions, in determining a progressive approach to implementation over time. More specifically, the Conference may wish to consider the desirability and possibility of concentrating initially on a limited number of issues that are key to building a solid foundation for the fight against corruption and for international cooperation, and to deal as far as possible with cross-cutting topics in the framework of a chapter-by chapter review of the Convention. In informal consultations, it has been suggested to consider the following provisions as the initial focus for reviewing implementation: in chapter I, article 6 on anti-corruption bodies and 9 on public procurement, and in Chapter III, the five mandatory criminalization provisions.⁶ International cooperation was also recommended as an area for initial review, specifically with regard to mutual legal assistance and the relaxation of the dual criminality requirement for assistance involving non-coercive measures. The Conference may also wish to devote particular attention to asset recovery, in view of the innovative nature of the provisions of Chapter V of the Convention.

⁶ Article 15 on bribery of national public officials; article 16, paragraph 1, on active bribery of foreign public officials and officials of public international organizations; article 17 on embezzlement, misappropriation or other diversion of property by a public official; article 23 on laundering of proceeds of crime; and article 25 on obstruction of justice.

Different Methods for the Review of the Implementation

22. In order to facilitate the Conference of the States Parties for making a decision on appropriate method for information collection and review mechanism, the Secretariat of the Convention had prepared a paper on the methods used to gather information from States parties and to review implementation of international instruments. It provided an overview of existing compliance mechanisms of regional, sectoral and international instruments and summarizes the mechanisms used to review the implementation⁷ the paper also outlines the compliance mechanisms for the human rights instruments, the instruments for the protection of the ozone layer, the international drug control conventions and information on the review of the implementation of the United Nations Convention against Transnational Organized Crime. A review of these existing mechanisms may aid the Conference of the States Parties to the Convention against Corruption in deciding on the appropriate mechanism to discharge its related functions.

23. The Purpose of gathering information is to provide information to the CoSP to (a) To review the implementation of the Convention; (b) To assess needs for technical assistance and establish priorities in provision of such assistance; and (c) To establish benchmarks and assess trends over a longer period of time. A variety of methods to gather information from States parties have been applied by existing implementation bodies, which include Questionnaires, Country-reports, Self assessments, Open sources and Country visits. Once the information has been collected, the implementation body needs to establish a mechanism to analyse and review the information. In many cases, this review is done in plenary sessions. Some treaty bodies establish working groups and others have developed an independent body for this purpose. The various review mechanisms adopted under different instruments are highlighted below.

(i) Asian Development Bank and Organization for Economic Cooperation and Development Anti-Corruption Action Plan for Asia and the Pacific: Monitoring is based on mutual review of information provided in self assessment reports in steering group meetings, which are held once or twice a year. The voluntary nature of the programme creates a strong sense of ownership among the participating States. However, the lack of a treaty basis makes this a largely political undertaking.

(ii) Council of Europe anti-corruption standard-setting instruments: The Council of Europe, as a result of the work of the Multidisciplinary Group on Corruption, has, over the years, adopted a comprehensive Programme of Action against Corruption and issued a range of anti-corruption standard-setting instruments.⁸ The Group of States against

⁷ The instruments covered include, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (OECD), the Inter-American Convention against Corruption and the African Union Convention on Preventing and Combating Corruption, relevant instruments of the Council of Europe.

⁸ Criminal Law Convention on Corruption; Civil Law Convention on Corruption; Additional Protocol to the Criminal Law Convention on Corruption; Twenty Guiding Principles for the Fight against Corruption; Recommendation No. R(2000) 10 on codes of conduct for public officials; and Recommendation No. R(2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns.

Corruption (GRECO) of the Council of Europe was created as a follow-up mechanism to improve the capacity of its members to fight corruption by monitoring their compliance with the Council of Europe anticorruption instruments through a dynamic process of mutual evaluation and peer pressure. GRECO monitoring comprises an evaluation procedure leading to recommendations and a compliance procedure designed to assess the measures taken by its members to implement the recommendations. GRECO holds between three and five plenary meetings per year. All 42 members are evaluated within one evaluation round. In cases of non-compliance, GRECO's rules of procedure provide for a number of measures designed to assist the member in reaching the desired level of compliance. The GRECO review is in-depth and foresees an active dialogue at all stages.

(iii) Inter-American Convention against Corruption: A Mechanism for Follow-up, Implementation of the Inter-American Convention against Corruption (MESICIC), was established and 28 States members of the Organization of American States (of 34 signatories) now participate in it. MESICIC tracks how States parties to the Convention are implementing its provisions and recommends concrete measures the States can take to improve compliance. It consists of self-assessment and peer review with review teams and committee discussions. The Mechanism is comprised of two bodies: the Conference of the States Parties, which is made up of representatives of all the States and has the authority and general responsibility for implementing the Mechanism; and the Committee of Experts, which is made up of experts appointed by each State party and is the body responsible for the technical analysis of how those States implement the Convention. The Committee meets twice a year.

(iv) African Union Convention on Preventing and Combating Corruption and African Peer Review Mechanism of the New Economic Partnership for Africa's Development: A follow-up mechanism calls for an Advisory Board of 11 members elected by the African Union Executive Council, serving for a period of two years, renewable once. The Advisory Board has broad responsibilities for promoting anti-corruption work, collecting information on corruption and on the behaviour of multinational corporations operating in Africa, developing methodologies, advising Governments, preparing codes of conduct for public officials and building partnerships.

The African Union has also set in motion another governance review process under its New Economic Partnership for Africa's Development (NEPAD), the African Peer Review Mechanism. Each of the 23 States completes a self-assessment questionnaire and prepares a draft national action plan, which ultimately results in a background document identifying the major governance challenges facing that State. This is followed by country review visits, the compilation of a country report containing analysis and recommendations for improving governance to be reviewed by the African Peer Review Panel, which in turn makes recommendations to the African Peer Review Forum.

(v) United Nations Convention against Transnational Organized Crime and the Protocols thereto: The implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto is reviewed by a Conference of

the Parties. Its mandate is similar in principle and approach to the mandate of the CoSP to the Convention against Corruption, but less detailed and somewhat more limited in scope. It decided to begin a “horizontal” review of actions taken by Governments to implement the Convention by way of collecting information on legislation adopted to comply with the Convention and its Protocols through questionnaires. However, even after first two reporting cycle, the rate of responses to these questionnaires was not encouraging and only less than half of the States parties responded to the questionnaires on time.

(vi) Towards an effective review mechanism for the United Nations Convention against Corruption: The Secretariat paper suggests that to achieve the goal of effective review mechanism, the Conference must strike the optimal balance between information gathering and implementation review mechanisms on the one hand and the required financial and human resources on the other. The analysis is in fact essential to determine compliance with the Convention and to tailor the provision of technical assistance to support implementation.

24. The mechanism needs to possess, or have ready access to, the necessary expertise and be vested with legitimacy, objectivity and impartiality. The initial phase could have States parties undertake a comprehensive selfassessment of their compliance with the Convention. To facilitate this process, the Secretariat would produce a checklist of issues to be considered and a set of guidelines. Assistance would be made available to States upon request to help them in undertaking the comprehensive self-assessment. On the basis of the self-assessment, States parties would be in a position to identify vulnerabilities, weaknesses and gaps in implementation of the Convention. These would then form the basis of concrete action plans setting out specific time frames and establishing clear priorities. Thus, States would be in a position to use the self-assessment and the action plans as ways of establishing benchmarks and measuring progress in their domestic efforts to implement the Convention and curb corruption.

25. A group of experts would be established to review the self-assessments and the action plans. After individual consultations with the States parties, the group of experts would prepare findings on the status of implementation by the State concerned and recommendations for enhancing implementation. The group of experts to oversee the voluntary implementation programme would carry out the reviews and evaluate the programme in its entirety. The Group would also be charged with designing a proposal for a full-fledged review mechanism, building on the experience gained by the voluntary programme, for submission to the Conference of the States Parties.

26. The Conference of the States Parties, finally, decided to setup a effective review mechanism to review the implementation of the Convention which was an important step forward as it makes clear that such a mechanism it not optional. The Conference also agreed to established a working group with a deadline next year to make recommendations on the specifications of how all countries would track their efforts in fighting corruption and implementing the Convention. It was also decided to establish a new inter-governmental working group will help to develop mechanisms to locate, freeze, confiscate and return stolen assets to their countries of origin.

C. Bribery of officials of public international organizations

27. The General Assembly, in its resolution 58/4, requested the Conference of the States Parties to address the criminalization of bribery of officials of public international organizations, including the United Nations, taking into account questions of privileges and immunities, as well as of jurisdiction and the role of international organizations, making recommendations regarding appropriate action in that regard.

28. The criminalization of bribery involving a foreign public official was addressed throughout the negotiation of the draft text of the article that became article 16 of the adopted Convention. During the drafting stage, on the initial proposed article 16 *bis*, several delegations drew attention to the fact that the formulation of the article could potentially create difficulties in relation to jurisdictional matters and could conflict with existing international legal instruments governing privileges and immunities. Thus it was decided to have a non-mandatory formulation. It was also agreed that the *travaux préparatoires* would indicate that the article was not intended to affect any immunities that foreign public officials or officials of public international organizations might enjoy in accordance with international law.

29. In that context, the Conference of the States Parties considered a request from the UNODC to use the intersessional period to hold, jointly with the Office of Legal Affairs, an open-ended working group, in which all interested organizations could participate, to discuss this matter and prepare substantive documentation with particular emphasis on the questions of privileges and immunities, jurisdiction and the role of international organizations. The recommendation of the criminalization of bribery of international civil servants, including United Nations staff, received wholehearted support from the Conference of State Parties.

D. Technical assistance

30. For the successful implementation of UNCAC, the need for providing technical assistance is widely recognized. This is also recognized in the Convention, wherein the Conference of the States Parties would explore ways to strengthen technical cooperation, in accordance with the relevant provisions of the Convention. In accordance with paragraph 4 (g) of article 63 of the Convention, the Conference of the States Parties shall agree upon activities, procedures and methods of work for taking note of the technical assistance requirements of States parties with regard to the implementation of the Convention and recommending any necessary action in that respect.

31. The Economic and Social Council through its resolution 2005/18 of 22 July 2005, entitled “Action against corruption: assistance to States in capacity-building with a view to facilitating the entry into force and subsequent implementation of the United Nations Convention against Corruption”, called upon Member States to continue to make adequate voluntary contributions to the United Nations Crime Prevention and Criminal Justice Fund to provide developing countries and countries with economies in transition

with the technical assistance necessary to implement the United Nations Convention against Corruption. The important role of the UNODC in providing to Member States 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 was reiterated in many other resolutions.⁹

32. In line with the requirements of the UNCAC, the technical assistance activities provided under the Global Programme against Corruption by UNODC focus in particular on supporting individual countries through long-term technical assistance projects aimed at the following:

- (a) Establishing or strengthening anti-corruption bodies and policies (arts. 5, 6),
- (b) Strengthening integrity and the capacity of criminal justice institutions to prevent corruption within those institutions (arts. 7, 8 and 11);
- (c) Enhancing the capacity and effectiveness of criminal justice institutions and professionals in detecting, investigating, prosecuting and sanctioning corrupt practices (arts. 30-34, 36-39 and 60);
- (d) Improving institutional capacities to cooperate at the international level, including in preventing the transfer of proceeds of corruption and in the identification, tracing, seizing, confiscation and return of such assets (arts. 14, 31, 43-55, 57 and 60).

33. While significant efforts have been made to provide a range of services to Member States in support of their efforts to ratify and implement the provisions of the Convention, the assistance are piecemeal. In view of the scope of the Convention, it was recognized that there is a need to provide technical assistance to a larger number of countries, as well as to offer a broader range of technical assistance to meet the growing demand of Member States. The types of technical assistance that could be offered include:¹⁰

1. Building a shared understanding of the challenges, risks, scope and nature of corruption
2. Legal Advisory Services
3. Institution-building
4. Policy and technical advisory services
5. Training and enhancement of professional skills
6. Guides, handbooks and other tools
7. Information exchange and partnership-building
8. Coordination of technical assistance

⁹ General Assembly resolution 60/175 of 16 December 2005, entitled “Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity”; UNGA resolution 60/207 of 16 March 2006, entitled “Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption”; ECOSOC resolution 2006/24 of 27 July 2006, entitled “International cooperation in the fight against corruption”.

¹⁰ For details see CAC/COSP/2006/9.

E. Notification requirements in accordance with the relevant articles of the Convention

34. According to the Convention, the State Parties to the Convention are required to notify, in accordance with the relevant articles of the Convention, to the Secretary-General. It may be noted that many States have already notified as per the requirement of the Convention.¹¹ The Notifications are pursuant to:

- article 6, paragraph 3: designation of competent authorities for assistance in prevention measures,¹²
- article 44, paragraph 6 (a): the Convention as the legal basis for cooperation on extradition,¹³
- article 46, paragraph 13: designation of central authorities for requests for mutual legal assistance,¹⁴
- article 46, paragraph 14: acceptable languages for requests,¹⁵

35. During the Conference, the Conference of the States Parties also considered the most appropriate ways to ensure the availability of up-to-date information required in accordance with these articles of the Convention.

III. CONSIDERATION OF THE ITEM DURING THE FORTY-FIFTH SESSION OF AALCO

36. The item “An Effective International Legal Instrument Against Corruption” was introduced by the Secretary-General in the agenda of the AALCO at its 41st Session held in Abuja, Nigeria (2002). This suggestion was in line with the Article 1(a) of the AALCO’s Statutes which provides for exchange of views and information on matters of common concern having legal implications. It was felt that the AALCO could make useful contributions to the negotiations concerning the international convention for preventing and combating corruption. Since then the AALCO Secretariat has been reporting developments in the negotiation of the UN Convention against Corruption. Accordingly, the item was deliberated at the forty-second (Seoul 2003), Forty third (Bail

¹¹ CAC/COSP/2006/4.

¹² Notification received from Albania, Bolivia, China P.R., Croatia, Finland, Latvia, Mauritius and Norway.

¹³ Notification received from Albania, Azerbaijan, Belarus, Bolivia, Croatia, Latvia, Panama, Paraguay, Poland and South Africa. El Salvador, Mauritius and Seychelles specifically excluded the Convention as the legal basis for cooperation on extradition. The Russian Federation accepted such use of the Convention on the basis of reciprocity.

¹⁴ Albania, Azerbaijan, Benin, Bolivia, Bulgaria, China, Croatia, El Salvador, Latvia, Mauritius, Norway, Panama, Paraguay, Poland, Romania, Russian Federation, Seychelles, Slovakia and South Africa. The Russian Federation declared that it would accept such requests on the basis of reciprocity and in urgent circumstances, through Interpol, provided that the documents containing such requests were dispatched without delay in the prescribed manner.

¹⁵ Albania (Albanian); Azerbaijan (Russian, English and Azeri); Benin (French); Bolivia (Spanish); Bulgaria (Bulgarian and English); China (Chinese); the Hong Kong Special Administrative Region of China (English and Chinese); the Macao Special Administrative Region of China (Chinese and Portuguese); Croatia (Croatian and English); El Salvador (Spanish); Latvia (Latvian); Mauritius (English and French); Norway (Danish, English, Norwegian and Swedish); Panama (Spanish); Paraguay (Spanish); Poland (English and Polish); Russian Federation (Russian); and Slovakia (English and Slovak).

(2004), and forty-fourth (Nairobi 2005) forty-fifth (2006) Sessions. The Forty-fifth Session of AALCO was held in New Delhi, India held from 3-8 April 2006. The Resolution adopted at that session urged the Member States to implement the UN Convention against Corruption.

37. Dr. Li Zhenhua, Deputy Secretary-General, in his introductory statement noted that as a follow-up to the Book “Combating Corruption: A Legal Analysis”, the Secretariat had initiated another Special Study detailing the nature of obligations under the UN Convention against Corruption which would be released during this Session. He noted that the Convention entered into force on 14 December 2005 and 50 parties had so far ratified it. He hoped that the Member States would consider a strong implementing mechanism during the first Conference of States Parties to the UNCAC to be held in Jordan from 1st December 2006. He urged States to formulate a strategy for the implementation of the objectives enshrined in the instrument and felt that the United Nations Convention Against Transnational Organized Crime (UNTOC) has very similar provisions and strategy to deal with corruption and the implementation of these provisions by the Conference of Parties of the UNTOC would complement the implementation of the UNCAC.

38. Many Member States presented their statements during the Session. All the Delegates highlighted the urgent need to combat corruption at the international level. The Delegates also welcomed the adoption and entry into force of the UNCAC and agreed that the Convention would certainly become a universal instrument in the fight against corruption. They also highlighted some of the salient features of the Convention. The Member States explained the efforts currently undertaken by them for the ratification of the Convention. Those States that had already ratified the Convention enumerated the efforts taken by them to incorporate the objectives of the Convention into their domestic laws, in order to effectively combat corruption. Some delegates urged Member States to ratify the Convention as soon as possible and proposed the establishment of mutual legal cooperation and assistance among the Asian and African countries.

39. One delegate noted that some of the omitted provision in the UNCAC should be re-inserted in future Protocols and the ambiguities in the existing provision should be removed. Some delegate noted that they had already concluded bilateral agreements for extradition and mutual legal assistance to enhance their ability to combat transnational crimes, including corruption. One delegate proposed that the Secretariat initiate a consolidated study of issues among AALCO Member States to be raised at the forthcoming and subsequent Conferences of Parties of both UNTOC and UNCAC. Another Delegation proposed that the Secretariat should establish a group of legal experts to prepare a model law in line of the UNCAC, so that the objectives of the Convention could be implemented at the national level. Most delegates expressed the need for establishing effective international cooperation for mutual legal assistance and asset recovery.

40. Thereafter, the Secretary-General released the AALCO Secretariat publication “*Rights and Obligations Under the United Nations Convention against Corruption*” and presented the first copy to the Vice-President of the Forty-Fifth Session.

ANNEX I

RATIFICATION STATUS OF INTERNATIONAL AND REGIONAL CONVENTIONS BY ASIAN AND AFRICAN COUNTRIES

140 States have signed the UN Convention against Corruption and 81 States has ratified it. The Convention came into force on 14 December 2005. 147 States have signed UN Convention against Transnational Organised Crime and 129 States has ratified it. 40 States have signed African Union Anti-Corruption Convention and 16 States has ratified it.¹⁶

Table I: Ratification status of African Countries

Signature (S), Ratification (R), Accession (A), and Implementation (I)

Countries	UN Anti-Corruption Convention	UN Transnational Organised Crime Convention	African Union Anti-Corruption Convention
Algeria	R	R	R
Angola	R	S	-
Benin	R	R	S
Botswana	-	R	R
Burkina Faso	R	R	R
Burundi	R	S	R
Cameroon	R	R	-
Cape Verde	S	S	-
Central African Republic	R	R	-
Chad	-	-	-
Comoros	S	A	R
Congo	R	S	R
Cote d'Ivoire	S	S	S
Democratic Republic Congo (Zaire)	-	-	S
Djibouti	R	-	S
Egypt	R	R	-
Equatorial Guinea	-	R	S
Eritrea	-	-	-
Ethiopia	S	S	S
Gabon	S	A	S
Gambia	-	R	S
Ghana	S	-	S
Guinea	S	A	S
Guinea-Bissau	-	S	-
Kenya	R	A	S
Lesotho	R	R	R
Liberia	A	A	S
Libya	R	R	R
Madagascar	R	S	R

¹⁶ Signature and ratification status as on 1 January 2007.

Malawi	S	S	-
Mali	S	R	R
Mauritania	R	-	-
Mauritius	R	R	S
Morocco	S	R	-
Mozambique	S	R	R
Namibia	R	R	R
Niger	-	R	R
Nigeria	R	R	S
Rwanda	R	R	R
Senegal	R	R	S
Seychelles	R	R	-
Sierra Leone	R	S	S
Somalia	-	-	-
South Africa	R	R	R
Sudan	S	R	-
Swaziland	S	S	S
Tanzania	R	R	R
Togo	R	S	S
Tunisia	S	R	-
Uganda	R	R	R
Zambia	S	A	S
Zimbabwe	S	S	S

Table II: Ratification status of Asian Countries

Signature (S), Ratification (R), Accession (A), and Implementation (I)

Countries	UN Anti-Corruption Convention	UN Transnational Organized Crime Convention
Afghanistan	S	R
Bahrain	S	A
Bangladesh	-	-
Bhutan	S	-
Brunei	S	-
Cambodia	-	S
China P.R.	R	R
Cyprus	S	R
Fiji	-	-
India	S	S
Indonesia	R	S
Iran	S	S
Iraq	-	-
Japan	S	S
Jordan	R	S
Kyrgyzstan	R	
Kazakhstan	-	S

Korea, Rep. of	S	S
Korea, D.R.	-	-
Kuwait	S	S
Kyrgyz Republic	S	R
Lebanon	-	R
Lao PDR	S	A
Malaysia	S	R
Micronesia	-	A
Mongolia	R	-
Myanmar	S	A
Nepal	S	S
Oman	-	A
Pakistan	S	S
Palestine	-	-
Philippines	R	R
Qatar	S	-
Samoa	-	-
Saudi Arabia	S	R
Singapore	S	S
Sri Lanka	R	S
Syria	S	S
Tajikistan	-	R
Turkmenistan	R	
Thailand	S	S
Timor-Leste	S	-
Turkey	S	R
U.A.E.	R	S
Uzbekistan	-	R
Vietnam	S	-
Yemen	R	S

ANNEX II

THE FIRST ANNUAL CONFERENCE AND GENERAL MEETING OF THE INTERNATIONAL ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES, Beijing, 22 – 26 October 2006

DECLARATION*

The representatives of the Anti-Corruption Authorities of 137 Member States of the United Nations and 12 international organizations, gathered in Beijing, Peoples' Republic of China, for the First Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities, held at Grand Epoch City from 22 to 26 October 2006, declare as follows:

Recalling General Assembly resolution 58/4, by which the Assembly adopted the United Nations Convention against Corruption and established 9 December as the International Anti-Corruption Day,

Recalling also the High-Level Conference for the Signing of the United Nations Convention against Corruption, held in Mérida, Mexico, from 9 to 11 December 2003,

Recalling further all relevant General Assembly and Economic and Social Council resolutions, including those adopted on the recommendation of the Commission on Crime Prevention and Criminal Justice, by which those bodies have called for the expeditious ratification and full implementation of the United Nations Convention against Corruption,

Welcoming the entry into force on 14 December 2005 of the United Nations Convention against Corruption and the convening of the first session of the Conference of the States Parties to the Convention, to be held in Jordan from 10 to 14 December 2006,

Noting with appreciation the generous offer of the Government of the Hashemite Kingdom of Jordan to act as host to the first session of the Conference of the States Parties,

Aware of the important contribution of civil society and relevant NGOs to the objective analysis and evaluation of anti-corruption initiatives,

1. *Express* their gratitude to the Supreme Peoples' Procuratorate of the Peoples' Republic of China for having taken the initiative of convening the Conference and launching the International Association of Anti-Corruption Authorities, as well as their deepest appreciation to the Government and people of the Peoples' Republic of China for their gracious hospitality that made the Conference a resounding success;
2. *Adopt* the Constitution of the International Association of Anti-Corruption Authorities and request its Executive Committee to actively pursue the objectives of the Association and provide adequate follow-up to this declaration;
3. *Mandate* the Executive Committee to review the proposals and suggestions emanating from the IAACA Conference and recommend practical measures that can be implemented by the IAACA in an effective and timely manner;
4. *Welcome* with satisfaction the high rate of ratifications of and accessions to the United Nations Convention against Corruption and call upon those countries that have not yet done so to expedite the required internal procedures in order to ratify or accede to the Convention as a matter of the highest priority and urgency;

* Approved by unanimity on 25 October 2006. See CAC/COSP/2006/10.

5. *Extend* their warmest congratulations to Foreign Minister Ban Ki-Moon of the Republic of Korea for his appointment to the post of Secretary-General of the United Nations and express their wish that he will continue to provide the highest priority to the fight against corruption in his efforts to ensure the full and effective implementation of the United Nations Convention against Corruption;
6. *Recognize* the lack of scientific methods of measuring corruption and the urgent need for accurate and objective data on its occurrence and impact, as well as methodologically sound analysis at the national and international levels;
7. *Urge* anti-corruption authorities to devote attention to the collection and analysis of relevant data and information, sharing among them as IAACA members their official data and statistics, and invite UNODC to develop the necessary tools for accurate and objective measurement of corruption with the view to undertaking such measurement, as an important step for effective review of implementation and as a necessary complement to the work of the Conference of the States Parties to the Convention;
8. *Encourage* Anti-Corruption Authorities to make every possible effort to participate in the delegations of their respective countries to the first session of the Conference of the States Parties to the United Nations Convention against Corruption;
9. *Encourage further* Anti-Corruption Authorities to participate actively in the Conference of the States Parties, especially by making sure that there will be substantive discussion and concrete outcomes from the side event designed for anti-corruption authorities at the Conference;
10. *Call upon* States to apply faithfully the provisions of the United Nations Convention against Corruption and be guided by them when deciding to establish anti-corruption authorities or to amend the current terms of reference and mandate of existing bodies, in compliance with the relevant provisions of the Convention;
11. *Urge* States to maintain the appropriate balance in the mandate of these anticorruption bodies, paying due attention to their critical preventive functions;
12. *Call upon* States to rely on the Convention in strengthening international cooperation in criminal matters, particularly in extradition and mutual legal assistance cases, especially when they have no bilateral agreements or arrangements in place;
13. *Urge* Anti-Corruption Authorities to make full use of the relevant provisions of the Convention in establishing and strengthening, as appropriate, their operational cooperation, learning from each other's experience and supporting each other in the performance of their demanding tasks, including in the exchange of best practices, lessons learned and difficulties encountered, as well as the activities undertaken to celebrate the International Anti-Corruption Day, December 9th;
14. *Welcome* the forthcoming publication by UNODC of the Legislative Guide for the Implementation of the United Nations Convention against Corruption, as well as the ongoing development of the Technical Guide for Implementation of the Convention and commend UNODC for its work;
15. *Invite* the Conference of the States Parties to devote priority attention to strengthening technical assistance related to the implementation of the Convention, especially in meeting the legislative requirements of the Convention and in institution-building and training;
16. *Welcome* the increased importance given to the question of asset recovery around the world and commend initiatives undertaken by Governments, relevant international

organizations or academic institutions and civil society organizations to raise awareness and promote better understanding of this fundamental principle of the Convention;

17. *Invite* the Conference of the States Parties to the Convention to give high priority to the streamlining of the various initiatives on asset recovery in order to achieve maximum efficiency and effectiveness, paying particular attention to the urgent need to build knowledge and strengthen capacity on this matter, especially among developing countries and countries with economies in transition;

18. *Invite also* the Conference of the States Parties to the Convention to give utmost importance to its mandated role as the body responsible for the review of implementation of the Convention and, for this purpose, consider at its first session the review mechanism, including peer review, self-assessment and monitoring, which will be necessary to establish as soon as possible, in accordance with paragraph 7 of article 63 of the Convention, so as to allow it to discharge this crucial function in the most effective and efficient manner, and calls upon States Parties to cooperate with UNODC in discharging this important function;

19. *Call upon* development agencies to participate in the Conference of the States Parties to the Convention at the highest possible level and to engage in active dialogue between them and with UNODC with a view to ensuring that the Convention is fully integrated in their work and forms the basis for their capacity building efforts, especially in the area of governance;

20. *Call upon* the United Nations Development Programme, as well as the international financing institutions, and multilateral and regional development banks, to participate actively at the Conference of the States Parties to the Convention and work together with UNODC, with a view to fully integrating the Convention in their relevant work and to join forces with UNODC in establishing common programmes of technical assistance to promote the full implementation of the Convention, particularly on matters related to asset recovery;

21. *Recommend* that the text of this Declaration be widely circulated by the relevant anti-corruption authorities in their respective countries and that it be submitted by the Host Country of this Conference to the Conference of the States Parties to the United Nations Convention against Corruption, as well as to the General Assembly and other relevant bodies of the United Nations.