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ESTABLISHING COOPERATION AGAINST TRAFFICKING IN WOMEN AND CHILDREN

I. INTRODUCTION

A. Background

1. The topic “Establishing Cooperation against Trafficking in Women and Children” was included on the agenda of the AALCO at its Fortieth Session held in New Delhi, in June 2001 upon a proposal by the Government of Republic of Indonesia. In the explanatory note the Government of Indonesia pointed out that trafficking in women and children, a transnational organized crime, was truly international in nature and increasingly became a global concern, since the menace of this crime has no boundary. Countries in Asia and Africa as in other regions are not immune from the menace of this crime. The international community in response to combating this menace considering it as a global threat drafted the United Nations Convention against Transnational Organized Crime and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The UN General Assembly at its millennium meeting in November 2000 subsequently adopted them.

2. The Government of Indonesia emphasized that the UN Convention against Transnational Organized Crime, particularly its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children is intended to combat trafficking in persons and facilitate international cooperation against such trafficking.¹ Therefore, participation in large numbers in the Convention and the Protocol will strengthen the cooperation in combating the crime of trafficking in human beings. The Government of Indonesia opined that the inclusion of the topic on the agenda of the AALCO would facilitate the deliberations on the topic which would, in turn, help to establish cooperation² among Member States in preventing and combating the crime of trafficking in women and children.

3. At the Forty-Third Session of AALCO, held in June 2004 in Bali, Republic of Indonesia, a resolution (RES/43/SP 1) adopted after in-depth and thought provoking presentations and discussions at the Special Meeting on the topic, reiterated *inter alia*, the request for Member States, who are not a party to the Convention and its Protocol, to consider becoming parties to the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. It further requested Member States to transmit to the AALCO Secretariat their national legislation, if any, on the subject, if they have not done so.³

¹ The Convention, concluded at the 10th session of the Ad Hoc Committee established by the General Assembly to deal with this problem, is a legally binding instrument committing States that ratify it to taking a series of measures against transnational organized crime. These include the creation of domestic criminal offences to combat the problem, and the adoption of new, sweeping frameworks for mutual legal assistance, extradition, law-enforcement cooperation and technical assistance and training.

² For the scope of cooperation, significant issues were proposed by the Indonesian Government, namely, the role of law enforcement in the trafficking in women and children cases; prosecutorial strategies; model legislation and international agreements; intelligence sharing and effective resource utilization and other initiatives.

³ So far the Secretariat has received responses from the following Member States relating to their respective national legislations on the topic: **Tanzania, Sultanate of Oman, Singapore, People’s Republic of China, Republic of Korea, Philippines, Japan, Mauritius, Cyprus, Ghana, Qatar, United Arab**

Also, the resolution directed the Secretary-General to develop, in cooperation with Member States, a Model Law for the criminalisation of trafficking in persons as well as protection of victims of trafficking, before, during and after criminal proceedings, based on human rights approach with a view to developing a concrete action plan for a joint effort against trafficking in persons, specially women and children.⁴

4. As a first step towards fulfilling the mandate entrusted to the Secretary-General vide RES/43/SP 1 and as an initial step towards drafting a Model Law, the Secretariat studied the national legislations received from the Member States of AALCO in the light of the Protocol to Suppress, Punish and Prevent Trafficking in Persons, prepared an outline with a view to developing a concrete action plan for a joint effort against trafficking in persons, especially women and children. Accordingly an outline of the model law in the form of addendum was presented at the Forty-Forth Session, for consideration of the Member States.

5. During the Forty-Fourth Session of the AALCO in Nairobi, Kenya, in June-July 2005, delegations reiterated and emphasized on the urgent need for cooperation within the framework of the Convention and the Protocol. Most of the delegations affirmed the need for the model legislation on this issue. However, the delegation of Indonesia recommended undertaking an in-depth discussion or workshop for preparation of a set of draft model legislation for the criminalization of trafficking in persons.

6. At the Forty-Fifth Session of the AALCO at Headquarters, New Delhi, India in April 2006, the Secretariat presented a draft model legislation consisting of Preamble and five draft articles. The delegates from various Member States had an in-depth discussion on this topic.

7. In this backdrop, the brief at hand prepared for the consideration at the Forty-Sixth Session, briefly traces out the interrelationship of this stream with other branches of international law, therefore making it more relevant. Also, there is an attempt to describe the concept of consent to trafficking, *inter alia*, citing the recent international developments on the topic.

B. Issues for focused deliberations at the Forty-Sixth Session of AALCO

- *Distinguishing between genuine and self/voluntary trafficking.*
- *To deliberate upon issues like how to reduce demand, and targeting only the criminals.*
- *Enforcing and protecting the human rights of the trafficked persons.*
- *Any other regional efforts and initiatives to be taken to cooperate in combating this crime.*

c. Secretariat Comments and Observations

8. Despite the positive developments, serious obstacles remain to prevent and combat trafficking and restoring dignity to all victims of trafficking. It is necessary to bear in mind that trafficking in persons, especially women and children, will not be weeded out without addressing the long-term underlying causes for trafficking in persons.

Emirates, Sudan, Nepal, Lebanon, Myanmar, Syrian Arab Republic, Arab Republic of Egypt, Malaysia, The republic of Uganda Thailand and Kuwait.

⁴ Operative Para 9 of the Resolution (RES/43/SP1).

Some of the causes are extreme poverty and severe lack of economic opportunities in home countries, inequality of women and absence of adequate State support on one hand and inability to migrate legally from deprived to prosperous countries, on the other hand in reality there is a demand for foreign labour in developed countries. Long-term development and poverty reduction strategies together with human rights, democracy and women empowerment promotion must be a part of any approach and solution devised to combat the growing menace of trafficking in persons as well as approaches to the question of migration and the rights of migrants.

9. It is abundantly clear from the constant increase in trafficking trade that the existing international legal framework is inadequate and narrow. Thus, it is averred that ‘to successfully combat trafficking in persons we need to take a three-pronged approach involving prevention of trafficking, prosecution of traffickers and protection of human rights of trafficked persons.’⁵ It is further argued that any efforts to understand and analyze the problem of trafficking would remain incomplete if it is approached from the point of view of prevention of crimes only. Thus it is felt that human rights approach should remain the *sine qua non* of any mechanism against trafficking in persons. The existing international legal framework is also critiqued on similar lines including the UN Trafficking Protocol and the UN Convention against Transnational Organized Crime. Therefore, it is necessary that any approach should equally focus on the effects on the victims of trafficking and their rights as reflected in various human rights and other instruments under international law. Recent ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’ of the Office of the United Nations High Commissioner for Human Rights are of significant importance in this direction.

10. Historically, trafficking has often been understood as movement only for commercial sexual purposes, and has thus not been comprehensively dealt with in law as was evidenced in the early international legal instruments. Accordingly in many countries, the problem of trafficking is addressed through prostitution laws, which seek variously to criminalize, regulate or control the sex industry and sex trade. In this regard there is clearly an urgent need for countries to review laws that do not take account of a comprehensive understanding of trafficking as reflected in the Protocol against Trafficking in Persons and to ensure that adequate protection in law is provided. Further, it is not enough to enact legislation that makes trafficking in persons a serious crime, without complementing it with effective law enforcement mechanisms. Without effective law enforcement and prosecutions of traffickers, traffickers continue their criminal activities unhindered. Therefore, it is desired that effective enforcement mechanisms as well as integrated legal framework should be developed with international cooperation.

11. What is most often overlooked with regard to successful enforcement of even the best pieces of legislation is that not only must the law itself be changed to impose liability on traffickers and on patrons of places where trafficked victims may be forced into prostitution, but more importantly, to reform the functional equivalent of the law, that is, the customs, the traditions, and acceptable behaviour. Countries that tolerate, accommodate, or normalize prostitution should review their policies and inquire whether such tolerance, accommodation or normalization contributes to the rising numbers of

⁵ Elaine Pearson, Trafficking Programme Officer, Anti-Slavery International, “*The Need for effective Witness Protection in the Prosecution of Traffickers: A Human Rights Framework for Witness Protection*” Paper presented at the First Pan-African Regional Conference on Trafficking In Persons, Abuja, Nigeria, 19-23 February 2001. <http://www.antislavery.org/archive/other/witnessprotection.pdf>

trafficking victims. It is also relevant to recognize the significance of addressing traditional systems that may play a part in the trafficking infrastructure, for sexual exploitation, as well as for forced labour.

12. The UN Convention against Transnational Organised Crime addresses and requires States Parties to adopt effective measures to promote integrity and prevent, detect and punish the corruption of public officials.⁶ Although there have been some cases of prosecution of public officials for their involvement in trafficking, many States are still unwilling to expose and punish corrupt public officials. In many countries, corruption is rampant and continues to remain a major contributor to the trafficking infrastructure. Therefore, the issue of trafficking in persons should be addressed within the larger context in light of the existing obligations of States under the various regimes of international law and human rights law.

13. It is encouraging to note that most of the AALCO Member States are already Parties to the Convention on the Elimination of all Forms of Discrimination against Women, as well as the Convention on the Rights of the Child. These measures could facilitate in addressing these issues effectively and systematically. Communications received by the AALCO Secretariat from Member States in respect of national legislations show that even though many countries do not have anti-trafficking legislations per se, however, provisions in other domestic laws do deal with the offence of trafficking in women and children. An early ratification of the Convention and its Protocols specially the Protocol to Prevent, Suppress and Punish Trafficking in persons especially Women and Children would go a long way in dealing with the crime of trafficking.

14. A significant step towards protection against trafficking in women and children could be the formulation of model legislation, reflecting the dispositions of International instruments, a proposal that was supported during the Fortieth session of AALCO in 2001. Further, during the discussions held during the Special Meeting on 'Establishing Cooperation against Trafficking in Persons, especially Women and Children' in Bali during the Forty-third Session, many delegations reiterated the importance of having a model legislation on the said subject, particularly they emphasized the need of having a common definition for the 'crime of trafficking in persons'. The preparation of model legislation may also facilitate consideration by Member States of becoming parties to the UN Convention Against Transnational Organized Crime and its Protocol. This task could be accomplished with the technical assistance and effective co-operation from the International Organization for Migration (IOM) and the Office of the High Commissioner for Human Rights (OHCHR) with whom a Cooperation Agreement and Memorandum of Understanding were signed in the years 2000 and 2001 respectively. In this connection, Member States may be requested to communicate to the Secretariat their national legislation relating to preventing and combating the crime of trafficking in women and children as well as protecting victims. A remainder 1 (No. ETAWAC/211/2006/AALCO) dated 19 December 2006 was sent to Member States requesting them to send in their comments to the Secretariat on the first set of the draft articles of the Model Legislation against Trafficking in Women and Children.

15. The Forty-Sixth session of AALCO would provide a good opportunity for Member States to deliberate upon various issues involved especially on the concept of

⁶ Articles 8 and 9 of the Convention against Transnational Organised Crime.

genuine or self/voluntary trafficking for economic gains and find ways and means in tackling the issue and establish an effective cooperation among Member States against trafficking in women and children and to approve the guidelines drawn up for formulating the model law, also, to discuss the content and importance of the draft articles prepared by the Secretariat as ‘Model Legislation Against Trafficking in Persons Especially Women and Children’.

II. GENESIS OF LEGAL REGIME ON “TRAFFICKING IN PERSONS”- INTERNATIONAL CONTEXT

16. The struggle to combat trafficking started around one hundred years ago. The international community had declared that it is sexual exploitation and hence unacceptable and needs to be condemned at all levels. Trafficking in persons, especially women and children, is a global human rights violation, which is considered to be a contemporary form of slavery, recognized by the international community. Data collection for this clandestine activity is highly difficult. The most vulnerable sections of the society, the women and children, fall prey to this activity – ‘organized crime’. They are trafficked annually across national borders and are placed in the conditions of slavery and slave-like conditions and later on engaged in forced prostitution, forced labour, domestic work, begging or used for organ transplants.

17. The causes of trafficking, apart from, the social and economic factor depend largely upon the unequal economic development of countries and the adverse impact of the globalisation processes on less-developed countries that aggravate widespread poverty and inequality as well as gender-based violence perpetrated by patriarchal institutions of the society. Socio-economic factors, and aftermath of any regional and civil conflicts, are the two important aspects responsible for trafficking in persons. While the former include extreme poverty, illiteracy, economic crisis, lack of State support at home at times, the globalization of economic systems and developments in transportation and information technology; the latter include political changes, displacement etc., which occurs due to the regional or civil conflicts. The mobility of peoples in search of better employment and a better life, by the spread of new information technologies, and by the integration of the sex industry in mainstream economies, trafficking for sexual exploitation has become pervasive in every major region of the world.

18. The prohibition against prostitutional slavery has long been a part of traditional international law. Over the years the concept of slavery and related practices has evolved and in the beginning of the 20th century the term “white slavery” was introduced to describe a new form of slave trade – forced prostitution. International agreements and treaties on this issue were signed in 1904,⁷ 1910,⁸ 1921,⁹ and 1933.¹⁰ All these International Agreements address the issue of forced prostitution and forbid the trafficking of women or girl of full age, for any immoral purpose. All the above mentioned anti slavery treaties were consolidated in the “1949 U.N. Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others”. This Convention is termed as the most comprehensive, consolidated and detailed one

⁷ *International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83.*

⁸ *International Convention for the Suppression of the White Slave Traffic, 1910.*

⁹ *The International Convention for the Suppression of the Traffic in Women and Children, 1921.*

¹⁰ *International Convention for the Suppression of the Traffic in Women of Full Age, 1933.*

since it prohibits individuals, or countries, from procuring, enticing or leading away, another person for the purposes of prostitution, even with the consent of the person.¹¹

19. However, the 1949 Convention focused only on prostitution (including voluntary prostitution) rather than on trafficking and has no implementation and supervision mechanisms to guarantee its efficiency.¹² This Convention stands outdated because in the past, women were trafficked for prostitution.¹³ But, now there is a variety of forms and methods of sexually exploiting women and children, for instance, brothel prostitution, sex tourism, mail-order bride arrangements, pornography, cybersex, and the like. The Convention also does not contain any strict implementation mechanism for the purpose of compliance with treaty provisions. Although the Convention requires States Parties to report annually to the United Nations Secretary-General with regard to implementation of the Convention at the national level,¹⁴ no independent treaty body has been established to monitor the implementation and enforcement of the treaty.

20. In 1992, the UN established the Commission on Crime Prevention and Criminal Justice in order to take action against transnational organized crime by placing it high, on the international agenda. Later, the General Assembly established an intergovernmental group of experts, which met in Warsaw (February 1998) and elaborated a preliminary draft of a possible convention. Proposals from the Warsaw Intergovernmental Group were submitted to the Commission and led to discussions on a draft resolution.¹⁵ The UN Commission on Status of Women (UNCSW) took up this issue through the resolution filed by the Philippines government. By annually filing this resolution through UNSCW and the UN Commission on Human Rights, and later by the General Assembly, the issue of trafficking in women and children was made visible at the UN level. In 1995, at the “Fourth World Conference on Women”, (Beijing Conference) held in Beijing, People’s Republic of China, one of the main themes was the issue of trafficking in women for prostitution and other forms of commercialized sex, including forced marriage and forced labour within the overall framework of violence against women.¹⁶

21. Upon recommendation by the Commission, the Assembly established in December 1998 an Ad Hoc Committee for the elaboration of the United Nations Convention against Transnational Organized Crime and three additional protocols which would address: trafficking in persons, especially women and children; smuggling of migrants;¹⁷ and illicit manufacturing of and trafficking in firearms, their parts,

¹¹ The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Mar. 21, 1950, 96 U.N.T.S. 271.

¹² See e.g. Radhika Coomaraswamy, *Report on Trafficking in Women, Women’s Migration and Violence Against Women*, Feb. 21, 2000, U.N. Doc. E/CN.4/2000/68, pp. 21-26.

¹³ It is argued, “The 1949 Convention arises out of a prohibitionist perspective and seeks to criminalize acts associated with prostitution, though not prostitution itself. The 1949 Convention has proved ineffective in protecting the rights of trafficked women and combating trafficking. The Convention does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason; rather, the Convention views them as vulnerable beings in need of protection from the “evils of prostitution”.

¹⁴ Article 21 of the 1949 convention.

¹⁵ Argentina proposed the drafting of a new convention against trafficking in minors and Austria presented the draft of the convention on illegal trafficking and transport of migrants. Canada and Japan proposed an instrument on firearms.

¹⁶ Strategic Objective D.3 of the Beijing Platform for Action (BPFA).

¹⁷ The Protocol was adopted by resolution [A/RES/55/25](#) of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations.

components and ammunition.¹⁸ In 2000, the General Assembly at its Millennium meeting adopted the “*United Nations Convention Against Transnational Organized Crime*” and its three Protocols.¹⁹ The Convention entered into force on 29 September 2003. The Convention has 147 signatories and 114 State Parties to it.²⁰ The purpose of the Convention is ‘to promote cooperation to prevent and combat transnational organized crime.’²¹ International cooperation could be achieved by eliminating differences among national legal systems, and by setting standards for domestic laws it attempts to effectively combat organized crimes. It also provides for strong measures allowing law enforcers to confiscate criminal assets and crack down on money laundering to put an end to transnational crime profiting. Further, it is noteworthy that all the provisions of the Convention are also applicable *mutatis mutandis* to the Protocols.

22. *The Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* was drafted to provide a universal instrument to address all aspects of trafficking in persons, especially women and children. The Protocol characterizes trafficking in persons as an explicit crime. Essentially, the Protocol intends to “prevent and combat” trafficking in persons by requiring a comprehensive international approach in countries of origin, transit and destination and protect the victims by safeguarding their basic human rights.²² It provides for criminal offences, control and cooperation measures against traffickers. It also provides some measures to protect and assist the victims, however they are optional in nature.

III. CONCEPTS AND DEFINITION

23. The definition of the concept of “trafficking in persons”²³ when it was included there was another perspective too, which required that the term should include protection of all victims of trafficking and not just those who could prove that they had been forced or coerced. It also proposed the prosecution of traffickers and pimps, as well as protection measures for victims, and focused on the demand aspect that had been invisibly linked in the trafficking chain. The other perspective was supporting the legalised prostitution, which literally means ‘self/voluntary trafficked persons’, who later on work as sex workers. This view accentuated that the notion of ‘sex as work’ and ‘voluntary trafficking

¹⁸ The Protocol was adopted by resolution [55/255](#) of 31 May 2001 at the fifty-fifth session of the General Assembly of the United Nations. The Ad Hoc Committee approved the Convention in July 2000 and the protocols on trafficking in persons and smuggling of migrants in October 2000.

¹⁹ The three protocols are: Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, (ii) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (iii) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.

²⁰ For the list of Member States of AALCO who have ratified or signed the Convention and the Trafficking in Persons Protocol please see Annex I and Annex II.

²¹ Article 1 of the Convention.

²² Preamble to the Protocol on Trafficking In Persons.

²³ Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children defines it as “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

as migration for sex work or economic gain’ and need not limit the definition of trafficking for prostitution or sexual exploitation, and should not confine to ‘victims’ of trafficking. Also, limiting the coverage of trafficking only to those who can prove that they had been forced, this in effect would limit the definition of trafficking to some and not all victims of trafficking.

24. While distinguishing the genuine victims from self/voluntary trafficked persons who consciously allow themselves to be trafficked to seek economic gain from the destination countries it is necessary to understand the social circumstances that might have compelled them to take up prostitution, due to various reasons. The consent of the self/voluntary trafficked persons could also have been coercive at the earlier stage and it becomes important to understand that their non-acceptance in the society or considering them as a taboo would require them to rethink on the necessity to shift their livelihood. Even when women voluntarily enter into these situations, in hope of making money or finding a better life, the dynamics of the brutal, often illegal sex industry, quickly leave the women with few other options and powerless to leave. The arguments for legalizing prostitution and thereby enforcing them their rights should be reconsidered since once any country accepts prostitution as legal then the vicious circle for the demand for trafficked persons increases to sustain the activity of prostitution. This would in fact nullify any attempt at the international level to combat trafficking in persons, especially women and children.

25. The problems that could be confronted when making a distinction among the genuine and self/voluntary trafficked persons could be two-fold: (i) denial of justice to the genuine victims and (ii) laxity on the part of the authorities to curb it. The reference here is made to the laxity on the part of the authorities in administering the justice and supporting them by rehabilitating them. The acceptance of such class distinction would categorise every single victim of trafficking as ‘with the consent’ category, which in turn would deprive them from enjoying their full human rights regarding fighting their case, rehabilitative rights, etc. Hence, the trauma that these victims would have to face is to fight their case at the initial stage to prove their genuineness rather than punishing and targeting the traffickers.

IV. LINKAGE OF TRAFFICKING IN PERSONS WITH OTHER INTERNATIONAL LEGAL REGIME

A. International Human Rights Law

26. The issue of trafficking in persons is multifaceted and multidimensional. It is to be dealt from a human rights perspective too, since it is closely related to other major international issues like illegal migration and organized crime. The studies indicate the inter-linkages between organized crime and trafficking in persons are two-fold: vertical and horizontal. Firstly, trafficking in persons consists of chains of individual, vertical offences, which are in close relationship with each other. Such crimes in vertical relationship are, *inter alia*, corruption, counterfeiting of traveling documents and violation of immigration laws. Secondly, there are horizontal connections between different criminal activities by the same organization. Criminal groups involved in particular in trafficking business are also involved in other types of criminal activities, such as various forms of sexual exploitation (including prostitution), illegal arms and/or drug trafficking. Furthermore, money received from these activities is to be laundered.

27. From human rights perspective, trafficking in persons, becomes highly significant since most of the basic human rights of the person trafficked are curtailed and violated. Those rights may be classified as right to life especially right to live with human dignity and security, freedom of movement, the right to work (and receive pay) and the right to health along with their right not to be subjected to torture or inhuman treatment. Women are generally trafficked for a very meager amount (which obviously would not be of any benefit to her) even without the consent of the person, which forces them to accept any form of work entrusted to them including forced labour, slavery and then to forced prostitution.

28. The international community has concluded many human rights treaties, *inter alia*, to deal with this issue. Chief among them are: the *Convention on the Elimination of All Forms of Discrimination against Women*, 1979,²⁴ the *Convention on the Rights of the Child*, 1989,²⁵ the *International Convention on the Protection of the Rights of All Migrant Workers and their Families*, 1990, *The Hague Convention on the Protection of Children and Cooperation in respect of Inter-country Adoptions*, 1993, the *International Labour Organization (ILO)'s Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, 1999 and the *Optional protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 2000.²⁶

B. International Criminal Law

29. General principles of criminalization as established under the Convention are extended to the supplementary Protocols too. The two elements that require the application of the Convention to cases involving are: (i) transnationality and (ii) organized crime. To formulate criminal offences as per the Convention, the following principles could be traced out, namely; minimum standard, liability of legal persons, offences must be criminal offences, non-inclusion of transnationality and organized criminal group in domestic offences, *mens rea* or intentional conduct to be criminalized and universality of jurisdiction. The principle of universal jurisdiction is applicable to prevent this crime. The Convention and the Protocol on trafficking includes provisions on criminalization of offences, extradition of criminals, and cooperation between States in prosecuting criminals. The first and foremost initiative under the Convention is to bestow all the State parties with the jurisdiction over offences committed for which it follows the general principle *aut dedere aut judicare* (either extradite or prosecute the criminal)²⁷.

C. International Refugee and Migration Law

²⁴ Article 6 reads as follows: States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

²⁵ Articles 32, 34, 35, 36 and 39 of the Convention on the Rights of the Child deal with the issue.

²⁶ In addition, there are other international declarations and plans of action addressing the problem. They are: the Plan of Action of the International Conference on Population and Development (1994) the Beijing Platform of the World Conference on Women (1995), the Declaration and Agenda for Action against Commercial Sexual Exploitation of Children adopted by the Stockholm World Congress on this issue (1996) (supplemented by the Yokohama Global Commitment (2001) as the follow-up process for the Stockholm Congress and Declaration), and the document entitled "A World Fit for Children" adopted by the UN in 2002.

²⁷. See article 15 para. 3, 16, and 10.

30. The women's human rights are violated when women who were previously recruited as domestic helpers or factory workers are forced to engage in prostitution or else their travel documents would not be returned. Further, another form of recruitment process is 'mail-order' bride industry wherein the young girls are sold to 'future husbands' or 'quasi-husbands' in order to avoid lengthy procedures of immigration. Once women and girls are "recruited" as per any of the categories mentioned above and migrate to another country, they are subjected to torturous methods to make them consent to prostitution and pay off the 'debt' for their recruitment. The nuances in the provisions of immigration laws of several countries for dealing with the victims of trafficking (who are classified as 'illegal immigrants' and 'illegal emigrants', since they don't have adequate exit visas and proper travel documents) make them again criminalized as 'migration criminals' along with penalizing them as prostitutes. This is called revictimization or criminalization.²⁸ However, it can never be a 'double jeopardy' since these victims will be penalized for two different offences, prostitution and as illegal emigrants or illegal immigrants.

31. Among factors, there are certain factors, which lead to cross-border trafficking in persons especially in women and children. These consist of (i) Conflicts and human rights abuses in the countries of origin, (ii) Displacement (restrictions on accessing asylum systems, unclear legal status, lack of documentation and limited humanitarian assistance), (iii) In order to escape war and terrorism, which would lead to more traumas, people migrate to another country falling into the vicious circle of poverty, refugee status, etc.

32. There are various means and methods of restriction on the institution of asylum like visa controls, carrier sanctions imposed on airlines and other carriers, immigration controls in countries of origin and interdiction and interception policies. One of the factors constituting trafficking is 'internal disturbances, civil strife, etc.' which leads to forced displacement. These results in people fleeing to other countries without proper travel documents and want to seek refuge in the other country. Hence, they invariably fall prey at the hands of the traffickers or smugglers rather than resorting to unfavourable procedures for their entry into the other State.

V. STATE'S OBLIGATION IN COMBATING TRAFFICKING IN WOMEN AND CHILDREN

33. States are responsible under international law for human rights violations and acts of violence perpetrated by the State or any of its agents. Such State responsibility arises not only from State actions, but also from omissions and failure to take positive measures to protect and promote rights. Domestic and international responses to trafficking in persons, especially women and children, have adopted a three-pronged approach: prevention of trafficking, prosecution of traffickers, and protection and reintegration of victims.²⁹ Prosecution, prevention and protection (including human rights protection)

²⁸ See Siti Ruhaini Dzuhayatin and Hartin Silawati, "Indonesia: Migration and Trafficking in Women", ed., by Janice G. Raymond, "THE NEXUS BETWEEN MIGRATION, TRAFFICKING AND SEXUAL EXPLOITATION", at Raymond (ed), note 7, at p. 24.

²⁹ See *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. Doc. A/53/383 (2000).

must be the main pillars of an effective strategy to combat trafficking in human beings.³⁰ In their zeal to prosecute traffickers and protect the integrity of their borders, States must take care not to inadvertently violate the principle of doing no harm to trafficked persons, for example, by increasing the risk of exposure to abuse by third parties.³¹ There is a clear need to ensure that the individuals falling victim to such criminal practices are protected.³² There are two important streams of obligation on the part of the States, namely, crime prevention and protection of human rights of the trafficked victims.

A. Crime Prevention

34. The Convention and the Trafficking in Persons Protocol is intended to control and prevent crime. Government policies and the practices of border control, immigration, police and justice agencies often concentrate on the illegal aspects of migration, leaving aside the involvement of organized criminal groups in the smuggling of human beings. Therefore, it becomes an obligation on the part of the government authorities to effectively implement the provisions of the Convention and the Trafficking in Persons Protocol to curb the menace of trafficking and to check the activities arising or leading to trafficking.

b. Protection of human rights of the Trafficked Persons

35. Trafficking of women and children is linked with violence against women and children and their human rights. All the human rights including the sexual and reproductive rights would form the gamut of 'women's human rights'. The sexual and reproductive rights of the women though are not specified in any of the international legal instruments of human rights, they are implicit in all of them and are defined in an array of non-treaty human rights declarations and action platforms.³³ Women's sexual and reproductive rights under international human rights law is a combination of civil, political, social, cultural, and economic rights. This includes the right to health and family planning; the right to life, freedom, integrity, and security; the right not to be assaulted or exploited sexually; the right not to be tortured or to be the object of cruel, inhuman, degrading punishment or treatment; the right not to be subject to sex-based

³⁰ See: Note by the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons. Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Eight Session, Vienna, 21 February - 3 March 2000 (A/AC.254/27)

³¹ See: Human Rights Caucus. 1999. *Human Rights Standards for the Treatment of Trafficked Persons*. (www.wagner.inet.co.th/org/gaatw/smr99.htm)

³² *Note by the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons*. Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Eight Session, Vienna, 21 February - 3 March 2000 (A/AC.254/27).

³³ The Program of Action adopted at the International Conference of Population and Development (The Cairo Action Program 1994) was the first international conference to define the term "reproductive rights" if not "sexual rights." Specifically, the International Conference on Population and Development (Cairo 1994) defined reproductive health as a "state of general physical, social and mental well-being" and not just "the absence of illness in all the aspects related to the reproductive system, its functions and processes." Reproductive health, therefore, includes the capacity to enjoy a satisfactory sexual life without risks, and the freedom to decide whether or not to have children, when and how many. For this reason, we can say that reproductive rights are recognized internationally and are binding. See also Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

discrimination; the right to privacy; the right to intimacy; and the right to enjoy scientific progress and the right not to be subjected to scientific or medical experimentation without full consent.

VI. OTHER REGIONAL INITIATIVES

36. There are few initiatives with reference to Asia and Africa on this issue. The South Asian Association for Regional Cooperation (SAARC) has drafted a convention on trafficking in women and children adopted in 2002; and in 2001, a decision was taken by the Association of South-East Asia Nations (ASEAN) to make the fight against trafficking in women a priority;³⁴ the UN Economic and Social Commission for Asia and the Pacific (ESCAP) initiated a seminar on using legal instruments to combat trafficking in women and children. The ASEAN Plan of Action to Combat Transnational Organized Crime had identified trafficking in women as one of the six priority tasks that require interregional cooperation.

37. Concerning inter-American regional organizations, the initiatives by the Inter-American Commission of Women and the Inter-American Children's Institute (both specialized agencies of the Organization of American States) are noteworthy. The European regional organizations (the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe [OSCE]) and their initiatives as: the establishment of the Task Force on Trafficking, focuses on awareness training, training and exchange programmes, law enforcement cooperation, victim protection programmes, return and reintegration assistance, relevant legislative reform, and prevention; the adoption by the OSCE, in 2001, of a set of anti-trafficking guidelines and a code of conduct for field personnel etc. stand significant.

A. Africa

38. Certain regional initiatives taken by the African States include the recently organized Joint ECOWAS³⁵/ECCAS³⁶ Conference of Ministers to Combat Trafficking in Persons, at Abuja, Nigeria in July 2006. The Conference may be called successful since they were able to bring out a Multilateral Cooperation agreement to combat Trafficking in Persons, especially women and children in West and Central Africa. This is a comprehensive document addressing every phase on how to combat trafficking in persons. A Plan of Action against Trafficking in Persons, especially women and children in West and Central Africa have been adopted for the year 2006-2008 and the development objective for the same states that 'All Women and children within ECOWAS and ECCAS regions benefit from effective protection measures against trafficking in persons.

39. In 2002, a Draft Plan of Action was drafted at the Africa-Europe 2nd Ministerial Conference held at Burkina Faso on Combating Trafficking in Human Beings especially women and children.

³⁴ Three ASEAN Bodies are involved in pursuing initiatives against trafficking in women and children: the ASEAN Ministerial Meeting on Transnational Crime (AMMTC), the ASEAN Chiefs of National Police (ASEANPOL) and the Sub-Committee on Women (ASW).

³⁵ Economic Community of West African States (ECOWAS).

³⁶ Economic Community of Central African States (ECCAS).

B. Asia

40. The SAARC Convention on preventing and combating Trafficking in women and children for Prostitution was adopted in January 2002. During the Ninth SAARC Meeting in Male, Maldives, the issue of trafficking was addressed and it was decided that a Regional Convention for Prostitution might be adopted in order to put an end to women's rights violations.³⁷ This convention emphasizes that trafficking in women and children³⁸ for the purpose of prostitution is incompatible with the dignity and honour of human being and therefore is a violation of basic human rights.³⁹ The purpose of the convention is to promote cooperation amongst Member States in order to deal with various aspects of prevention, interdiction and suppression of trafficking in women and children, the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.⁴⁰

41. The Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational crime was held in Bali, Indonesia from 27-28 February 2002 (the Bali Conference). The conference set out to establish a foundation for coordinated regional action to reduce the transnational crimes of people smuggling and trafficking in persons, and to address challenges presented by unregulated migration and the impact that it has on society. In order to meet this objective, "Ad Hoc Experts' Groups" were formed with mandates to establish an operational framework or 'mechanism' through which concrete initiatives could be undertaken to develop and strengthen regional anti-smuggling, anti-trafficking and related legislation; to improve regional cooperation in law enforcement, information and intelligence exchange; to strengthen national capacities to reduce smuggling and trafficking and related transnational crimes.

42. In the year following the first Bali conference, the two expert groups succeeded in establishing a framework through holding planning meetings to develop strategies and provide direction for follow-up action, and through targeted outcome-oriented workshops on law enforcement, legislative and return issues and information gathering and exchange.

VII. CONSIDERATION OF ITEM DURING AALCO'S FORTY-FIFTH SESSION (3-8 APRIL 2006, HEADQUARTERS SESSION, NEW DELHI, INDIA)

³⁷ Article 27 of the Male Declaration, Ninth SAARC Summit, Male, Maldives, May 1997. It reads thus, "27. Expressing grave concern at the trafficking of women and children within and between countries, the Heads of State or Government pledged to coordinate their efforts and take effective measures to address this problem. They decided that existing legislation in Member States should be strengthened and strictly enforced. This should include simplification of repatriation procedures for victims of trafficking. They also decided that the feasibility of establishing a Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution be examined by the relevant Technical Committee."

³⁸ Article 1 (4) of the SAARC Convention defines trafficking as "moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking".

³⁹ Paragraph 1 of the Preamble to the SAARC Convention.

⁴⁰ Article II of the SAARC Convention.

43. Many delegates participated in the discussions on the topic and primarily focused on the following aspects, recognized that trafficking in persons, especially women and children was a serious multifaceted and multidimensional issue, which violated the fundamental rights of individual, especially right to live with human dignity and security and freedom of movement. It was highlighted that human trafficking generated billions of dollars of revenue and was closely connected with money laundering, drug trafficking, documents forgery and human smuggling. A distinction was sought to be drawn between genuine victims of trafficking and self/voluntary trafficked persons. It was imperative to exert efforts towards an international coordination to develop an effective strategy to combat this grave crime; highlighting the various domestic endeavours and seminars being conducted in some countries to give more awareness about the problem and to search for solutions to curb it.

44. The Member States reiterated the importance of becoming parties to the international legal instruments as well as enhance interregional cooperation in this area. It was suggested by the Delegation of the Republic of Indonesia that in order to make the Protocol against trafficking in persons especially women and children more effective it was desirable that Member States while ratifying it do not make any reservations.

45. Some Member States gave concrete suggestions on how AALCO could play a more meaningful role in this area. It was suggested by some delegations that the Secretary-General of AALCO could coordinate efforts with the Bali Process and other international initiatives to draft the AALCO model legislation without overlapping the exercise, the Delegation of Malaysia while acknowledging the AALCO Secretariat's efforts in drafting the model legislation, stated that it should aim to enhance/build on the Bali Process Model Law, and that the AALCO Draft Model Law does not create inconsistent obligations as it would place the Bali Process countries in an untenable position.

46. The Delegation of Republic of Indonesia also requested the Forty-Sixth Session to initiate an in-depth discussion or workshop on the topic "The consequences of distinguishing the genuine victims of trafficking as defined in the Protocol and self/voluntary trafficked persons who consciously allow themselves to be trafficked to seek economic gain in destination countries" The Delegation from State of Qatar suggested that an "Asian-African Social Committee to Combat Trafficking in Women and Children" could be established with a view to enhance Asian African cooperation in the field of combating trafficking in women and children. The Delegation of the Arab Republic of Egypt stated that the definition of trafficking could include all the criteria incorporated in the various International and regional instruments. He also suggested that AALCO could create a database of all national legislations, display them on its electronic website so that all Member States could benefit from the various national measures employed to combat this crime.

VII. RECENT DEVELOPMENTS

A. 15TH SESSION OF THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE, (24-28 APRIL 2006, VIENNA, AUSTRIA).

47. The 15th Session of the Commission on Crime Prevention and Criminal Justice was held at Vienna, Austria from 24 –28 April 2006. This session was attended by representatives of 32 Member States, observers for 73 other States Members of the

United Nations, 2 non-member States represented by observers, representatives of 19 entities of the United Nations system and observers for the institutes of the United Nations Crime Prevention and Criminal Justice Programme network, 7 intergovernmental organizations, and 30 non-governmental organizations in consultative status with the Economic and Social Council.

48. The Commission's thematic discussion focused on "Maximizing the Effectiveness of Technical Assistance provided to Member States in Crime Prevention and Criminal Justice". A report was submitted by the Secretary-General on the United Nations Convention against Transnational Organized Crime and the Protocols thereto, which was prepared pursuant to Economic and Social Council resolution 2005/15 of 22 July 2005, entitled "Eleventh United Nations Congress on Crime Prevention and Criminal Justice", in which the Council endorsed the 'Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice', as adopted at the high-level segment of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok from 18 to 25 April 2005.⁴¹ The report stated that there has been substantial achievement both legally and politically in the year 2005 due to the entry of the Firearms Protocol and also in the 2005 World Summit Outcome has reaffirmed the strong commitment of Member States to make joint efforts to combat transnational crime.

49. The Commission on Crime Prevention and Criminal Justice while considering agenda item 6, entitled "International cooperation in combating transnational crime" referred to the following documents:

- a. Report of the Secretary-General on the United Nations Convention against Transnational Organized Crime and the Protocols thereto⁴²;
- b. Report of the Secretary-General on the United Nations Convention against Corruption⁴³;
- c. Report of the Secretary-General on preventing, combating and punishing trafficking in human organs⁴⁴;
- d. Report of the Secretary-General on the study on fraud, the criminal misuse and falsification of identity and related crimes⁴⁵;
- e. Note by the Secretariat transmitting the recommendations of the Second World Summit of Attorneys General and General Prosecutors, Chief Prosecutors and Ministers of Justice, held in Doha from 14 to 16 November 2005,⁴⁶ and;
- f. Note by the Secretary-General on the report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its second session, held in Vienna from 10 to 21 October 2005.⁴⁷

50. At the session, Member States reiterated that transnational organized crime continues to pose serious threats to the international community and has multifaceted implications at the national, regional and international levels. With a view to effectively

⁴¹ A/CONF.203/18, chapter I, resolution 1.

⁴² E/CN.15/2006/8.

⁴³ E/CN.15/2006/9.

⁴⁴ E/CN.15/2006/10.

⁴⁵ E/CN.15/2006/11 and Corr.1.

⁴⁶ E/CN.15/2006/17.

⁴⁷ E/CN.15/2006/19.

countering transnational organized crime, the need to strengthen international cooperation, as well as to address its root causes, was stressed. Further, it was emphasized that those States that are not yet parties to the Convention must ratify or accede to the Convention and its Protocols with a view to promoting their universal ratification. With regard to illicit trafficking in human organs, it was noted that such activities posed a significant threat to the health of human beings and infringed human rights. The harm to a nation's heritage resulting from theft of and trafficking in cultural property, as well as the dire need to take effective measures at the national level to combat these criminal activities were discussed during at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice.

B. FOLLOW-UP OF THE ELEVENTH UNITED NATIONS CONGRESS ON CRIME PREVENTION AND CRIMINAL JUSTICE (28 APRIL 2006, VIENNA, AUSTRIA).

51. At the 10th meeting of the 15th session of the Commission on Crime Prevention and Criminal Justice, on 28 April 2006, the Commission recommended to the Economic and Social Council the adoption of a revised draft resolution entitled "Follow-up to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice".⁴⁸ The present report was prepared pursuant to Economic and Social Council resolution 2005/15 of 22 July 2005, entitled "Eleventh United Nations Congress on Crime prevention and Criminal Justice", in which the Council endorsed the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, as adopted at the high-level segment of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok from 18 to 25 April 2005.

C. JOINT REGIONAL CONFERENCE OF MINISTERS (6-7 JULY 2006, ABUJA, NIGERIA).

52. The Governments of West and Central Africa signed a multilateral agreement and a regional action plan to fight trafficking in persons, especially women and children at the joint ECOWAS/ECCAS Conference of Ministers to combat trafficking in persons, especially women and children in the Nigerian capital city of Abuja, hosted by ECOWAS, the Nigerian government and its National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP). This agreement is considered historic since it is inclusive of all the countries in both West and Central African regions. This is the first time ever when so many countries have come to a consensus on a common regional strategy and action plan to fight human trafficking. Amb. Dr. Wafik Zaher Kamil, Secretary-General of the AALCO participated in the said meeting and delivered a statement which was very well received by the participants, wherein he highlighted the ever growing relevance of this topic and the need for AALCO to cooperate with organizations such as ECOWAS and ECCAS to have fruitful exchange of views and experiences and to coordinate on a solid base to combat this crime.

D. THIRD SESSION OF THE CONFERENCE OF PARTIES (COP) TO UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (9-18 OCTOBER 2006, VIENNA, AUSTRIA).

⁴⁸ E/CN.15/2006/L.8/Rev.1, sponsored by Algeria, Australia, Brazil, Canada, Chile, China, Croatia, Finland, Germany, Oman, Peru, Qatar, the Republic of Korea, Romania, the Syrian Arab Republic, Thailand, Turkey and the United States. (For the text, see chapter I, section B, draft resolution VII.)

53. The Convention, under article 32, provides for the establishment of a Conference of the Parties to promote and review the implementation of the Convention and supplementing Protocols, which should meet within one year of the Convention's entry into force. In accordance with the above-stated Convention mandate, the Conference held its first session in Vienna, Austria from 28 June to 8 July 2004 and the second session in Vienna, Austria from 10 to 21 October 2005.

Third session of the Conference of Parties (COP)

54. The Third Conference of Parties (COP-3) to the Convention Against Transnational Organized Crime was held in Vienna, Austria from 9-18 October 2006.⁴⁹ The Conference of Parties focused on two main objectives:

- (1) To Review the implementation of the United Nations Convention against Transnational Organized Crime and its three Protocols
- (2) Consideration of mechanisms for achieving the objectives of the Conference of the Parties in accordance with article 32, paragraphs 3-5, of the Convention.

55. To achieve this, the COP is expected to agree on mechanisms to:

- a. Facilitate training and technical assistance;
- b. Enable the exchange of information on patterns and trends in transnational organized crime and on ways to combat them;
- c. How to encourage countries to respond to questionnaires, how to cooperate with countries requiring technical assistance, and how to reflect the responses better and bring out issues that require attention by the Conference;⁵⁰
- d. Foster cooperation between intergovernmental and non-governmental organizations;
- e. Review periodically the implementation of the Convention and its Protocols with particular reference to the topics, in what order, how to obtain information and how to assess and analyse information provided by Governments on implementation mechanisms;⁵¹
- f. Make recommendations to improve the Convention and its Protocols and their implementation.

56. At its second session, held in Vienna from 10-21 October 2005, the Conference of the Parties to the Convention adopted the draft provisional agenda for its third session.⁵² In adopting the provisional agenda for the third session, the Conference indicated its intention to devote more in-depth attention to matters related to prevention of transnational organized crime at a future session.⁵³ The provisional agenda, which dealt

⁴⁹ Mrs. Christine J. Nimoto, the Permanent Observer of AALCO in Vienna, represented the Organization at the third session CTOC/COP/2006/INF.1

⁵⁰ These issues were highlighted in a non-paper by the President on "Re-launching the Conference of the Parties issues for discussion".

⁵¹ Ibid.

⁵² CTOC/COP/2005/L.11

⁵³ CTOC/COP/2006/1

with, the Convention and the Trafficking in Persons Protocol in particular, provided, *inter alia*,⁵⁴ on:

- (1) **Organizational matters**, like opening of the third session of the COP to the Convention, Election of Officers, Adoption of the agenda and organization of work, Participation of Observers, adoption of the report of the bureau on credentials;
- (2) **Review of the implementation of the United Nations Convention against Transnational Organized Crime** in particular, (i) issues of compliance with the Convention, including money-laundering (article 7); (ii) consideration of matters related to the protection of witnesses and victims (articles 24 and 25); (iii) consideration of matters related to international legal co-operation (articles 16, 17, 18, 13 and 14).
- (3) **Review of the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**, supplementing the United Nations Convention against Transnational Organized Crime in particular (i) consideration of matters related to assistance to and protection of victims of trafficking in persons (article 6) and the status of such victims in receiving States (article 7); (ii) consideration of matters related to repatriation of victims of trafficking in persons (article 8); (iii) consideration of matters related to prevention of trafficking in persons (article 9) and information exchange and training (article 10).

57. One of the major concerns of the Conference was to review the implementation of the Convention and its three Protocols and the lack of adequate response to the questionnaires⁵⁵ from States Parties to the Convention, that were circulated among them (as per the decision of 1/3 of the COP-1) with a view to obtain the information regarding the adaptation of the national legislation among other things. Further, the United Nations General Assembly at its sixty-first session stated that the UNODC shall be an ably functioning if it assists the States Parties to implement the Convention and its Protocols, support the ratification, assist States by giving legal expertise in preparing tools and model legislation; capacity building in terms of prevention and control of the transnational organized crime and corruption.

⁵⁴ The two other Protocols were also taken up as provisional agenda items. Review of the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, (i) consideration of matters related to protection and assistance measures for smuggled migrants (article 16); (ii) consideration of matters related to return of smuggled migrants (article 18) and Review of the implementation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (i) basic adaptation of national legislation in accordance with the Firearms Protocol, (ii) examination of criminalization legislation and difficulties encountered in the implementation of article 5 of the Firearms Protocol, (c) enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Firearms Protocol and (iv) views and experiences regarding record-keeping, marking and licensing gained in the implementation of articles 7, 8 and 10 of the Firearms Protocol.

⁵⁵ The questionnaire on the implementation of the Convention –CTOC/COP/2004/L.1/Add.2 and for the questionnaire on the implementation of the Protocol on Trafficking in Persons-CTOC/COP/2004/L.1/Add.2 The names of States Parties that had initially responded to those questionnaires were reported by AALCO Secretariat in its document no AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S 9

58. The Session was opened by the elected President Amb. Eugenio Cura from Argentina. Also elected were eight Vice-Presidents and the Rapporteur.⁵⁶ In his opening remarks the President referred to the aim of the Convention to encourage international cooperation in the fight against transnational crime and recalled that, as a major threat, organized crime was a matter of the highest priority for States. Expressing the collective frustration at how the work of the Conference had unfolded at times and deploring the low level of compliance with reporting obligations, he encouraged the Conference to take stock of the situation and use the third session as a forum for the intensive exchange of ideas on how to better comply with the requirements of the Convention.

59. Mr. Antonio Maria Costa, the Executive Director of the Division for Treaty Affairs for the United Nations Office for Drugs and Crimes (UNODC) underlined the specific features of the session, namely, the convening of two open-ended working groups of experts, on the issues of international cooperation and technical assistance. In his statement on the Review of the implementation of the Convention, the Executive Director expressed concern about the difficulties encountered in the implementation of the Convention and its Protocols. He identified three factors that had been conducive to that situation: the collective political will of Governments had been fading, as the impressive rate of ratifications had not been matched by similar progress in implementation; the lack of adequate resources for the crime prevention and criminal justice pillar of the UNODC; and the lack of comprehensive and credible information provided by Governments to the Secretariat that would enable a solid and reliable knowledge based policy analysis to be made. He called for a structured method of measuring organized crime through the development of an authoritative, inter-governmentally sanctioned measurement tool.⁵⁷ He proposed the mechanism to be tested during the two-year period before the fourth session of the COP, and as a result, a comprehensive assessment of the world crime situation would be made possible and an annual world crime report could be procured. Referring to the questionnaires, he invited the Conference to reflect on necessary remedies to address underreporting, and drew attention the document entitled “Relaunching the Conference of the Parties”.

60. The representatives of Costa Rica⁵⁸, Finland⁵⁹, Morocco⁶⁰, Azerbaijan⁶¹, the observer for the European Commission⁶², the representative of the United States of America and the Attorney General and Minister of Justice of Nigeria, stressed the importance of the specific provisions of the specific provisions on mutual legal assistance, extradition, law enforcement, technical assistance and training, in particular technical assistance aimed at addressing the issues of protecting and supporting victims of trafficking in persons. Many of them expressed regret over the low level of response to the questionnaires for the second reporting cycle, which could adversely impact on the effective implementation of the Convention and its Protocols. Some also felt that

⁵⁶ Eight Vice-Presidents belonged to Argentina, Azerbaijan, Chile, People’s Republic of China, Germany, Nigeria, Philippines, South Africa and United Kingdom of Great Britain and Northern Ireland and the Rapporteur belongs to Poland.

⁵⁷ UNODC could establish the new mechanism for assessing the implementation of the instruments based on a set of guidelines for a mutual assessment process that could be accompanied by national implementation plans. CTOC/COP/2006/L.1 pg. 9 para 34.

⁵⁸ On behalf of Member States of United Nations that are members of the Group of 77 and China.

⁵⁹ On behalf of the members of the European Union.

⁶⁰ On behalf of the members of the Group of African States

⁶¹ On behalf of the members of the Organization for Democracy and Economic Development (GUAM)

⁶² On behalf of the members of the European Community

persistent underreporting affected the ability of States to mutually disclose essential information required under the Convention and, consequently their ability to cooperate at the international level. Strengthening international cooperation and technical assistance through the exchange of information and sharing of experiences, capacity building and practical contacts, as well as by upgrading the capacity of media and non-governmental organizations, was also highlighted.

61. While discussing the “Review of the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children” was taken up at the COP, the Conference had before it two analytical reports of the Secretariat on the implementation of the Protocol, presenting updated information based on additional responses received from States parties and signatories for the first reporting cycle⁶³, and information received from States for the second reporting cycle⁶⁴ as well as other documents which it considered. It was reported that many States had provided replies to the questionnaire after the expiration of the deadline set by it for preparation of the analytical reports.

62. In their statements many delegations⁶⁵ provided the Conference with information on national legislation and practices already in place or on the ongoing reforms aimed at bringing their countries’ legal systems in line with the requirements of the Protocol. They also spoke of relevant measures taken ranging from establishment of inter-agency coordination of operations at national and regional levels. They also noted the implementation of communication awareness-raising strategies and campaigns (including television, radio and media awareness) to caution potential victims, and educate larger audiences. A number of speakers underlined the necessity of establishment of a multi-agency centre to provide a focal point for conducting research, improving training material and developing best practices and enhanced knowledge and understanding regarding the operations of organized criminal groups involved in trafficking in persons.

63. Some speakers referred to regional initiatives aimed at preventing trafficking in persons by, *inter alia*, strengthening regional cooperation including training programmes for law enforcement and immigration officers, judges and prosecutors. It was also noted that particular attention should be paid to the root causes of trafficking in persons, especially poverty, underdevelopment and lack of equal opportunity that make persons vulnerable to trafficking. One speaker urged Member States to implement article 9, paragraph 5, of the Protocol in a way that did not promote the demand for prostitution and sexual exploitation. Reference was made to the report and recommendations of the Special Rapporteur on the human rights aspects of the victims of trafficking, especially women and children⁶⁶.

⁶³ CTOC/COP/2005/3/Rev. 1

⁶⁴ CTOC/COP/2006/6

⁶⁵ Australia, Argentina, Belgium, Brazil, Burundi, Canada, Chile, **People’s Republic of China**, Colombia, Croatia, **Arab Republic of Egypt**, Finland, Germany, Greece, **Japan**, **Indonesia**, **Iran (Islamic Republic of)**, Lao, **Malaysia**, Mali, Malta, Mexico, **Nigeria**, Norway, Philippines, Romania, **South Africa**, Switzerland, United Kingdom and United States (bold AALCO Member States). Observers from European Commission, and some non-governmental Organizations also addressed the Conference: National Council of German Women’s Organization, Coalition against Trafficking in Women, International Alliance of Women and Global Alliance against Traffic in Women.

⁶⁶ E/CN.4/2006/62. It was noted that a panel discussion entitled “Protection of Trafficked Persons: A Human Rights Approach” had been organized by relevant non-governmental organizations during the current session of the Conference of Parties, on 11 October 2006.

64. Many speakers reported on inter-agency cooperation in the form of sharing and exchanging information in order to track victims and pinpoint the activities of traffickers. Some speakers specifically referred to the posting of liaison officers or attaches in foreign countries to work with host Governments and facilitate cooperation, while some others highlighted the establishment of national bodies to foster the exchange of information and monitoring cases using a centralized database. Yet another speaker, reporting on the setting up of a system for the management of information on trafficking in persons, referred to the difficulties that had arisen from the need to comply with domestic privacy laws and confidentiality requirements.⁶⁷

65. The consultations of governments experts⁶⁸ on protection of witnesses and victims; assistance to and protection of victims of trafficking in persons and the status of such victims in receiving States; and repatriation of victims of trafficking in persons, were held with a view to sharing lessons learned from implementing the relevant provisions of the instruments, government experts exchanged views and experiences in the areas listed below: (i) Distinction between the protection of witnesses and the protection of victims of trafficking in persons; (ii) linkage between the protection of victims of trafficking in persons and their cooperation with authorities; (iii) reflection periods; (iv) special needs for child victims; (v) housing services for trafficking victims; (vi) funding for protection and assistance; (vii) coordination between national and local authorities; (viii) cooperation between Governments and non-governmental organizations; (ix) cooperation between countries of origin and countries of destination; and (x) secondary traumatisation.

66. At the end of the third COP a series of decisions were adopted on ways to move ahead with implementation of the Convention and its three Protocols as well as the draft agenda for the Fourth Conference of Parties proposed to be in 2007 and proposed to focus on: (1) Organizational matters, (2) Review of the implementation of the UN Convention against transnational organized Crime, a. Compliance issues emerging from the current reporting cycles; b. Expert consultations on (i) Criminalization; (ii) International cooperation, with particular emphasis on extradition, mutual legal assistance and confiscation; (iii) Establishment and strengthening of central authorities; (iv) Protection of victims and witnesses; (v) Travel and identity documents; (vi) Marking of and record-keeping on firearms; (3) Technical assistance; (4) Future activities of the COP; (5) Financial and budgetary matters, and (6) Other matters.

E. CONSIDERATION OF THE ITEM AT THE SIXTY-FIRST SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY (2006)

67. At the sixty-first session of the UN General Assembly two resolutions were adopted (19th December 2006) in relation to trafficking in women and girls (A/RES/61/144) and on follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly (A/RES/61/145). The resolution

⁶⁷ The following States provided replies after the expiration of the deadline set by the Secretariat for the preparation of the analytical reports: Australia, Colombia, Lebanon, Malta, Norway, Netherlands, Russian Federation and Tunisia. The European Commission provided replies on behalf of the European Community, Mauritius provided a new set of replies, and Portugal provided an updated version.

⁶⁸ Azerbaijan, Belgium, Brazil, Canada, Germany, **Islamic Republic of Iran**, Italy, **Japan**, Latvia, Mexico, Morocco, Norway, **Philippines**, **South Africa**, United Kingdom, United States, Venezuela, and Zimbabwe. The observer of UNHCR also made a statement.

on *trafficking in women and girls*, has called upon Governments to eliminate the demand for trafficked women and girls for all forms of exploitation and to take appropriate measures to address the factors that increased vulnerability to being trafficked, including poverty and gender inequality. It further called upon all Governments to criminalize all forms of trafficking in persons and to condemn and penalize all those offenders involved, including intermediaries, whether local or foreign, through the competent national authorities, either in the country of origin of the offender or in the country in which the abuse occurred, as well as to penalize persons in authority found guilty of sexually assaulting victims of trafficking in their custody.

68. The Assembly further urged the Governments to take all appropriate measures to ensure that victims of trafficking were not penalized for being trafficked and that they did not suffer from revictimization as a result of actions taken by Government authorities. It requested concerned Governments to ensure that the treatment of victims of trafficking, as well as all measures taken against trafficking in persons, paid particular attention to the needs of women and girls, were applied with full respect for the human rights of those victims and were consistent with internationally recognized principles of non-discrimination, including the prohibition of racial discrimination and the availability of appropriate legal redress.

69. The resolution on *follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly*, expressed serious concerns that the urgent goal of 50/50 gender balance in the United Nations system, especially at senior and policymaking levels, remained unmet. It would call upon Governments, the United Nations system and other international and regional organizations and all sectors of civil society to fully commit themselves and to intensify their implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session.

70. Further the Assembly called upon States parties to comply fully with their obligations under the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto while urging States parties to consider limiting the extent of any reservations that they had lodged to the Convention.

71. The 16th Session of the Commission on Crime Prevention and Criminal Justice is scheduled to be held from 23 - 27 April 2007, in Vienna, Austria.

ANNEX I

AALCO MEMBER STATES PARTIES TO THE CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Country	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a)
Bahrain		7 Jun 2004 a
Botswana	10 April 2002	29 Aug 2002
China	12 December 2000	23 Sep 2003
Cyprus	12 December 2000	22 April 2003
Egypt	13 December 2000	05 March 2004
Gambia	14 December 2000	05 May 2003
India	12 December 2002	
Indonesia	12 December 2000	
Iran (Islamic Republic of)	12 December 2000	
Japan	12 December 2000	
Jordan	26 November 2002	
Kenya		16 June 2004 a
Kuwait	12 December 2000	12 May 2006
Lebanon	18 December 2001	05 October 2005
Libyan Arab Jamahiriya	13 November 2001	18 Jun 2004
Malaysia	26 September 2002	24 Sep 2004
Mauritius	12 December 2000	21 April 2003
Myanmar		30 March 2004 a
Nepal	12 December 2002	
Nigeria	13 December 2000	28 June 2001
Oman		13 May 2005 a
Pakistan	14 December 2000	
Philippines	14 December 2000	28 May 2002
Republic of Korea	13 December 2000	
Saudi Arabia	12 December 2000	18 Jan 2005
Senegal	13 December 2000	27 Oct 2003
Sierra Leone	27 November 2001	
Singapore	13 December 2000	
South Africa	14 December 2000	20 Feb 2004
Sri Lanka	13 December 2000	22 September 2006
Sudan	15 December 2000	10 Dec 2004
Syrian Arab Republic	13 December 2000	
Thailand	13 December 2000	
Turkey	13 December 2000	25 March 2003
Uganda	12 December 2000	9 Mar 2005
United Arab Emirates	09 December 2002	
United Republic of Tanzania	13 December 2000	24 May 2006
Yemen	15 December 2000	

ANNEX II

AALCO MEMBER STATES PARTIES TO THE PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

Country	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a)
Bahrain		7 Jun 2004 a
Botswana	10 April 2002	29 August 2002
Cameroon	13 December 2000	06 February 2006
China		
Cyprus	12 December 2000	06 August 2003
Egypt	01 May 2002	05 March 2004
Gambia	14 December 2000	05 May 2003
India	12 December 2002	
Indonesia	12 December 2000	
Iran (Islamic Republic of)		
Japan	09 December 2002	
Kenya		5 Jan 2005 a
Kuwait		12 May 2006 a
Lebanon	09 December 2002	05 October 2005
Libyan Arab Jamahiriya	13 November 2001	24 Sep 2004
Mauritius		24 September 2003 a
Myanmar		30 March 2004 a
Nigeria	13 December 2000	28 June 2001
Oman		13 May 2005 a
Pakistan		
Philippines	14 December 2000	28 May 2002
Republic of Korea	13 December 2000	
Saudi Arabia	10 December 2002	
Senegal	13 December 2000	27 October 2003
Sierra Leone	27 November 2001	
Singapore		
South Africa	14 December 2000	20 February 2004
Sri Lanka	13 December 2000	
Sudan		
Syrian Arab Republic	13 December 2000	
Thailand	18 December 2001	
Turkey	13 December 2000	25 March 2003
Uganda	12 December 2000	
United Republic of Tanzania	13 December 2000	24 May 2006
Yemen		