IX. SUMMARY RECORDS OF THE FOURTH GENERAL MEETING

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HELD ON THURSDAY, 24 JUNE 2004 AT 9:30 AM

1. **The Vice-President Honorable Mr. Ambrose Patrick Dery in Chair.**

2. **His Excellency Amb. Mr. Chusei Yamada**, the **Observer from the United Nations University** read the statement on behalf of His Excellency Mr. Hans van Ginkel, Rector of the United Nations University, Tokyo.

3. H. E. Mr. Ginkel recalled that the UNU and the AALCO signed an agreement of cooperation in 2002, to guide their joint efforts in areas of mutual interest: human rights and human security issues; and multilateral diplomacy, including the multilateral environmental agreements. It envisaged that such cooperation could take a number of different forms from mutual support of research, capacity development, scientific exchanges and the joint organization of seminars, workshops, or scientific meetings. He hoped that the Dr. Kamil could meet him and his senior colleagues at a convenient time to identify some concrete areas of cooperation that could be further developed in 2005 and implemented in the 2006-07 biennium and beyond.

4. He noted that during AALCO's Forty-Third Session Special Meeting on "Establishing Cooperation Against Trafficking in Women and Children" would be convened. This was a most important topic and the focus on the subject was very timely in particular in relation to the release on 14 June 2004 of the U. S. Department of State Annual Human Trafficking Report. Secretary of State Colin Powell was quoted as saying that between "600,000 and 800,000 persons and possibly more are being trafficked across international borders each year for the sex trade and forced labor." The United Nations University was currently carrying out a research project that seeks to deepen understanding of the social, economic, gender and political contexts of human trafficking. The objective of the project was to consider whether an understanding of these structural factors can inform policy discussion as well as other strategic interventions in the fight against trafficking.

5. There was a significant, although still insufficient, amount of knowledge about the activities of human traffickers, and a range of policy options at the national and international levels was available to tackle this problem. The research initiative started from an assumption that an understanding of human trafficking in its broad social, economic and policy context would be the key to solving the problem. It would be necessary to understand the distinction and interaction between structural variables (such as economic deprivation and market downturns, attitudes to gender, the demand for prostitutes) and proximate variables (such as lax national and international legal regimes, poor law enforcement, corruption, organized criminal entrepreneurship, weak education campaigns) that combine to enable individuals and organizations to traffic vulnerable people through deception, coercion and exploitation. The project was examining the proposition that in this era of globalization, prevailing economic forces had resulted in an erosion of state capacity and a weakening of the provision of public goods. An

understanding of the structural context was vital for addressing the problem at the site of origin and destination as well as at the international level.

6. He said the UNU's research was seeking to assess the dynamics of the trafficking business, as well as existing and possible remedial efforts within this comprehensive context. Research pursued through such a structural approach in terms of policy and legal initiatives would need to give specific reference to and analysis of existing international instruments, such as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime; the ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, the Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (in particular Article 6) and the UN International Convention on the Protection of the Rights of All Migrant workers and Members of their families.

7. The Observer stated that at the completion of the project in about one year's time they would publish a policy brief as well as a book to bring out the knowledge and policy options that had been identified through this research. He said that he looked forward to learning more about the discussions and the findings of the special meeting on the subject of trafficking.

8. In conclusion, he reiterated his personal interest in forging a strong collaborative relationship with AALCO.

A. The International Criminal Court: Recent Developments

9. The Chair resumed the consideration of the Item on the "The International Criminal Court: Recent Developments", from the Third General Meeting.

10. The **Delegate of the Arab Republic of Egypt**[1] stated that his country attached importance to the Rome Statute of the International Criminal Court. It had actively participated and contributed in the work of the Preparatory Committee for the elaboration of the Rome Statute, at the United Nations Conference of Plenipotentiaries for the adoption of the Statute and later after the adoption of the Statute in the Preparatory Commission. He informed that his country was a signatory to the Rome Statute. The pending issue of the definition of crime of aggression required resolution based upon the UN General Assembly Resolution of 1974. He hoped that at a later stage, the Review Conference could incorporate within the jurisdiction of the Court serious crimes such as terrorism, drug trafficking and the use of nuclear weapons.

11. The **Delegate of the People's Republic of China** thanked the Secretariat for its diligent work. She also thanked Ambassador Dr. Deihim for his useful introduction which had facilitated the understanding of the recent developments of the Court. The

[1] Statement delivered in Arabic. Unofficial Interpretation from the Interpreters version.

delegate noted that in two years since the entry into force of the Rome Statute, the four organs of the Court had been successfully established and all of the senior officials of the Court, i.e. the judges, the prosecutor and the registrar had been elected by the Assembly of States Parties and had already taken their posts. She observed that having accomplished its institution, the Court was moving to perform its functions. The Court was going to be tested in practice on whether it would be able to prosecute individuals responsible for the gravest international crimes with its limited resources, to strictly comply with the principle of complementarity, to perform its functions equitably, impartially, without political prejudice, and to avoid the application of double standards. She stated that her Government was convinced that being just and effective was of crucial importance for the Court to gain support and cooperation from the international society.

12. The Delegate emphasized that the crime of aggression was one of the four crimes within jurisdiction of the Court. However, it was a complicated issue. Any solution to it should be in conformity with the Charter of the United Nations. In this regard, her Government welcomed the establishment of a Special Working Group on the crime of aggression which would ensure equal participation of all States. She hoped that the international society would settle this issue in a practical and cooperative way.

13. Although her country was not yet a party to the Rome Statute, it had been keeping an eye on the development of the Court and had participated in the Assembly of States Parties as an observer. Her delegation hoped to see an independent, just and respectable international criminal court playing an important and positive role.

14. The **Delegate of Malaysia** said that her delegation viewed the establishment of the International Criminal Court (ICC) as a positive step towards promoting world peace and order. This was in line with the purposes and principles of the Charter of the United Nations. She observed that the Ad Hoc Tribunals for Rwanda and Yugoslavia had shown the usefulness of having an international court with criminal jurisdiction. In future, other cases may be referred to the Court for the purpose of trying and punishing offenders. The experience from the Nuremberg and Tokyo Tribunals remained the underlying foundation for the development of international criminal justice.

15. Bearing in mind that the Court works on the principle of complimentarity, her delegation was of the view that it would be wise to be comprehensive and certain in the study of the Rome Statute to ensure that the two diverse legal systems could complement each other. Her delegation observed that the Rome Statute provided for international assistance and legal assistance. States Parties must co-operate fully with the Court especially with regard to handing over offenders to be prosecuted and to facilitating the taking of items of evidence. Towards this end, States Parties should enact legislation to provide for the necessary procedures.

16. In this respect, she stated about the steps taken by his country. Malaysia had enacted the Mutual Assistance in Criminal Matters Act 2002 (MACMA). This Act would enable Malaysia to seek and provide mutual assistance in criminal matters for the purpose of investigation or prosecution.

17. Her delegation awaited for the first case to be brought before the Court to better understand the process of the Court. It had also noted that some States Parties to the Rome Statute had enacted specific legislation to give effect to the Rome Statute. Apart from conducting a thorough study on the Rome Statute, her country was also observing the experiences of other countries and any other recent developments of the Court.

18. The delegate stated that her country had also taken note of the work being conducted by the Special Working Group on the Crime of Aggression (SWG-CA) in the Assembly of States Parties of the International Criminal Court. The progress of the Group in trying to define this crime was being closely followed by her country. As with the rest of the world, it acknowledged the importance of coming up with an acceptable definition on the crime of aggression to be incorporated into the Rome Statute. Her country planned to participate in the forthcoming Third Session of the Assembly of States Parties in The Hague on 6-10 September 2004 both in the Plenary Session as well as the Special Working Group on the Crime of Aggression.

19. With regard to the initiative by the United States of America for States to enter into a bilateral agreement with it which would grant immunity for US citizens from ICC jurisdiction (the Article 98 Agreement), her delegation noted that such campaign was being carried out by the US and bilateral agreements to such effect had been entered between the US and numerous other States. Malaysia was of the view that although it was legally permissible to undertake such arrangement, States should not use Article 98 to undermine the integrity of the ICC or to weaken the spirit of the Rome Statute itself. Her country appreciated the concept of having an international court with criminal jurisdiction. It also reiterated its support for the establishment of the International Criminal Court. However, it would only accede to the Rome Statute once it was ready to do so, which included enacting the appropriate legislative provisions and putting in place administrative measures.

20. The **Delegate of the Republic of Korea** thanked the delegations for their words of condolence on the tragic death of a Korean civilian in Iraq. He hoped that such an unnecessary and inhumane death of innocent civilians would never occur again, and that those responsible for the outrageous crime will be identified and punished.

21. He stated that the adoption of the Rome Statute of the International Criminal Court (ICC) on July 17, 1998 was perhaps one of the most significant events in the history of the 20th century international law. Also, it may be said that the coming into effect of the Statute in July 1, 2002 was an important development at the dawn of the new millennium.

22. His government played an active role in the making of the Rome Statute, for example, by submitting an essential proposal concerning the jurisdiction of the Court. Korea ratified the Rome Statute in November 2002. A domestic Act implementing the Statute was expected to take effect within a couple of months. His delegation was pleased to notify the Member States of AALCO that the Korean Government planned to

sign the Agreement on Privileges and Immunities of the ICC by the end of this month, and would ratify it as soon as possible. It was trying every effort to expedite the internal process required.

23. The delegate stated that generally speaking, there were two basic reasons that a state chooses not to join the ICC.
First, a state may object to the idea of the ICC itself. For example, some governments and academics say that essential elements of criminal law or criminal due process are missing in the design of the ICC.
Secondly, some states seem to believe the ICC undermines the sovereign right to exercise jurisdiction over their own nationals. The idea of having its own citizen stand on international trial may not be that attractive. Although the principle of complimentarity was clearly stated in the Statute of the ICC, it does not seem to be trusted by all States.

24. The delegate informed that his delegation respected the decisions of various governments not to join the ICC, and believed their criticism should be heeded and heard. His delegation however, believed that such concern and criticism could be addressed by prudent and reasonable application and interpretation of the Rome Statute, as well as by further constructive consultations and discussions guided by the principles of justice and fairness. We need to continue such consultations and discussions because they would contribute not only to the progress in the future jurisprudence of the ICC, but also to the overall development of international criminal law.

25. Nonetheless, he observed it was still imperative that the ICC accomplishes the universality. In order for the ICC to be successful, it should receive more support and endorsement. His delegation was of the view that a larger representation of the Asian and African countries in the ICC would ensure a legitimate and fair Court.

26. He said that his delegation agreed with the Secretariat Report on the point it made with regard to the two situations under consideration by the Prosecutor of the ICC. The Report indicates that the two situations, namely the situation in Ituri and the reference by the Government of Uganda, would be critical in determining 'the course of international criminal justice system in future'. His delegation believed that the ICC would make a wise decision in dealing with these situations. The response of the ICC would be closely watched by many non-parties, as well as state parties to it. It follows that these situations would have a tremendous impact on the question of expanding the ICC. In this connection, his delegation expected the Court to prove itself a fair and effective judicial body.

27. The **Delegate of Republic of Indonesia** extended its Delegations appreciation to the President, officials and staff of the ICC for their tireless effort to develop the ICC as a new institution. The ICC had become a reality. The Court, he said was no longer an aspiration, but was a functioning institution. Most senior officials of the Court had been appointed and the Court was in the process of building its structures and devising its procedure. His delegation hoped that the ICC would be able to meet the challenge set by the international community.

28. He stated that his delegation attached a great importance to the fundamental principles of the work of the ICC, namely independence, impartiality, the rule of law, and the professionalism. Just and effective operation of the Court which would facilitate general support and cooperation from the international community was of significance to the future of the ICC.

29. He emphasized that in this respect, the application of the principle of complementarity was the key issue to the survival and vitality of the ICC work. National juridical system, social tradition and culture deserve due respect. National court should be given the primary role in the prosecution of human rights violations. He believed that this would encourage universal – acceptance of the jurisdiction of the ICC without much concern that it might be abused for politically motivated purposes.

30. His delegation shared some concerns that ICC itself would decide whether a particular state was "unwilling or genuinely unable to carry out the investigation or prosecution", in order to complement the jurisdiction of national court. The subjective interpretation by the ICC of what "unwilling or genuinely unable" may compromise the sovereignty of a state.

31. He said for that reason, his delegation reiterated that it would be prudent to observe at the first instance on the implementation of the Rome Statute and the operation of the ICC. However, it did not mean't that his country lacked commitment to stop human rights violations. Indonesia had concretely taken strategic steps to end human rights violations. Fundamental principles and provisions of Rome Statute, ICCPR, ICESR had been appropriately incorporated in the Indonesian national law.

32. With regard to the definition of aggression, his delegation consistently maintained that definition of Aggression adopted by the General Assembly in its Resolution 3314 / 1974 could be a sound basis and point of departure for both general definition and for the selection of acts for inclusion in the definition. The definition should be specific so as not to give rise to contentious interpretation and difficulties in proving the elements of the offence.

33. In light of conditions for the exercise of jurisdiction of the ICC over the crime of aggression, his delegation attached much significance that the ICC should exercise its jurisdiction in a manner consistent with the provisions of the United Nations Charter. Although the Security Council had primary role in the determination of an act of aggression, his delegation shared the view that lack of a determination by the Security Council as to the existence of an act of aggression committed by the State concerned should not impede the exercise of the Court's jurisdiction with respect to refer to it.

34. The **Delegate of Kenya** stated that his country had always been supportive of the ICC both prior and after its creation. It had signed but not yet ratified the Rome Statute. He emphasized that his country was yet to ratify because of the seriousness it gave towards meeting its international obligations.

35. Before ratifying the Rome Statute, Government of Kenya wanted to ensure that there was a law in place in conformity with the provisions of the Rome Statute. In this regard Kenya had drafted the International Criminal Bill so that upon ratification of the Rome Statute, the same would be enacted into domestic law.

36. He said that his country had taken note that some members of AALCO who have ratified the Rome Statute have also entered into the so called Article 98 bilateral agreements with the United States of America to exclude American nationals from the purview of ICC. He stated that most of these countries entered into these bilateral agreements purely because of national interest and not for the furtherance of international law. His country understands the position of these countries but viewed the bilateral agreements as watering down the letter and spirit of the Rome Statute.

37. His Delegation noted with appreciation, that it had been reported that the Government of USA had withdrawn the resolution seeking to grant immunity from prosecution for any of their peacekeepers accused of war crimes. The Delegate wanted to know the extent of the changed position by the Government of the USA and to exchange views within AALCO on the impact of this on bilateral agreements already concluded

38. He stated that the principle of universality needed to be the guiding principle. He emphasized that Kenya, through the forum of AALCO would appreciate guidance particularly for members who had not ratified to enable them be in a position to ratify. The creation of the ICC was a milestone that should be supported by all. He called upon the AALCO Member States to be active participants in the work of ICC to influence its jurisprudence and direction.

B. Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties

39. The **Deputy Secretary-General Amb. Dr. Ali Reza Deihim** introduced the Secretariat Report on the agenda item contained in the documents AALCO/43/BALI/2004/S 6 and AALCO/43/BALI/2004/S 6/Add.1. He recalled that the item was placed on the agenda of the 36th Session of the AALCO held in Tehran, upon a proposal made by the Government of Islamic Republic of Iran, in 1997. Later on a seminar was held in Tehran in 1998, for further exposition of the topic. Since then the topic has been considered at successive sessions of the Organization. Among others, some of the important conclusions reached on the basis of the discussions at the annual sessions of the AALCO were extra-territorial measures or the promulgation of domestic laws having extra-territorial effects with the imposition of unilateral attributions and objectives or secondary boycotts that were violative of the sovereign rights and economic interests of a State; they also violated the core principles of territorial sovereignty and political integrity of other states and non-interference in internal affairs of other countries which had been enshrined in the Charter of the United Nations; and thus they made a major constraint in the way of trade and economic cooperation between States.

40. He stated that the affirmation for the aforesaid conclusion of the Organization could also be deduced from the State practice in this regard. The response submitted to the UN Secretary-General, by 86 UN Member States, out of which 23 are AALCO Member States, whether they have laws and measures having extraterritorial effect clearly demonstrated that there was a crystallization of state practice that considers extraterritorial application of national legislation as violative of the principles of sovereign equality of States, non-intervention and non-interference as enshrined in the United Nations Charter, as well as the principles of freedom of trade and navigation. Such measures were considered to be detrimental to the right of development of the people of the targeted State. Furthermore, most of the States have neither enacted any law nor promulgated any measures, which had extraterritorial application. He explained that the Secretariat in its document while referring to the UN General Assembly resolution on the "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba", had in mind that the grounds or the basis on which such sanctions are imposed were same in each case and were contrary to the norms and principles of international law.

41. Recalling the deliberations on the agenda item at the Forty-First Session of the AALCO held in Abuja (2002), he said that the delegates were of the view that unilateral sanctions and extraterritorial measures against other countries were inadmissible under international law. Such actions, violated the principles set out in the UN Charter; the Declaration on the Inadmissibility of Interference in the Internal Affairs of States and the Protection of their Independence and Sovereignty (adopted in 1969); the 1979 Charter of Economic Rights and Duties of States; and the Friendly Relations Declaration of 1980. They also violated many other resolutions of UN General Assembly and Economic and Social Council (ECOSOC) resolutions that express grave concern over the negative impact of unilateral extraterritorial coercive economic measures and call for their immediate repeal. Further, it was stressed that such illegal measures impeded free international trade and negatively impinged upon social and human development in the targeted developing countries. Delegates were also critical of the United States of America for enacting and implementing legislations having extraterritorial application and they emphasized that many developing countries were affected by imposition of such legislations.

42. He welcomed the recent easing and lifting of sanctions against AALCO Member State Libya by the United States of America. He informed that the economic embargo was imposed on Libya in 1986 on the basis of alleged involvement in the terrorist attacks against the Rome and Vienna airports in December of 1985. These sanctions were eased or lifted in response to Libya's progress in dismantling its weapons of mass destruction and the missile capable of delivering them.

43. On the other hand, he informed on 11 May 2004, the United States of America had imposed sanctions against Syria allegedly on the grounds that it supported terrorist groups, its continued military presence in Lebanon, its pursuit of weapons of mass destruction, and its actions to undermine US and international efforts with respect to the

stabilization and reconstruction of Iraq. The imposition of these sanctions by the USA against our Member State needed to be strongly disapproved.

44. Amb. Dr. Deihim stated that the Secretariat in preparation of the study on this agenda item relied largely upon the materials and other relevant information furnished by AALCO Member States. In this regard, the Secretariat reiterated its request to the Member States to provide it with relevant legislation and other related information on this topic. In conclusion, he stressed upon all States to reject the promulgation and application of this dubious double standard form of legislation.

45. **His Excellency the Minister of Justice of Syria** stated that his country appreciated the introductory speech of Amb. Dr. Ali Reza Deihim on the topic. The Minister emphasized that the issuing of the so-called Syrian Accountability Law by the United States of America was for the sake of the aggressive state of Israel. By issuing that law it imposed sanctions against Syria allegedly on false grounds. The delegate emphasized that the extraterritorial application of this law lacked legal grounds and was outside its jurisdiction. It was a unilateral law and the USA tried to harm his country by imposing sanctions against the international law. The Minister wished that all the AALCO Member States would condemn this law because it was against the UN Charter and the international legitimacy.

46. The **Delegate of Sudan**[2] referred to the resolution adopted by the UN General Assembly that rejected the unilateral imposition of sanctions and said that such measures were against the spirit of the UN and the UN Charter itself. Recounting the bitter experience of Second World War, he said that for ensuring collective peace at times multilateral sanctions may be imposed. However, he stressed that the unilateral imposition of sanctions affected international peace and security.

47. The **Delegate of Republic of Indonesia** seized the opportunity to reassert Indonesian position on this particular subject. Indonesia was gravely concerned over the continued application of unilateral extraterritorial coercive measures whose effect had an impact on the sovereignty of other States and the legitimate interest of their entities and individuals in violation of norms of international law. Promulgation of domestic laws having extraterritorial effect may violate the core principles of territorial sovereignty and political integrity and therefore constituted a violation of cardinal principles of international law. Such measures also posed serious obstacles to trade and economic cooperation among States. For that reasons, his delegation maintained that promulgation or application by any State of any law affecting the sovereignty of other States should be rejected.

48. Giving a parallel in line with the view of Group of 77, his delegation expressed its concern about the impact of economic sanctions on the civilian population and the development capacity of targeted countries. His delegation therefore called on the international community to exhaust all possible peaceful methods of dialogue before resorting to a sanction. A sanction should only be considered as a last resort and may

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

only be imposed in strict conformity with the fundamental principles of international law, particularly the United Nations Charter. In addition, sanction must contain clear objectives, time frames, and provisions for regular review, along with precise condition for their lifting, and must not be used as punishment or other form of retribution.

49. The Delegate also noted that some new developments relating to this issue had taken place. His delegation welcomed the fact that sanctions imposed against Libya by the United States of America had been lifted. Yet, his delegation was deeply concerned with the imposition of sanctions against Syria and extension of sanction against Myanmar by the United States. Indonesia was of the view that sanctions against Syria and Myanmar did not serve the interest of peace and stability in the regions. It may even harm the national and international security and also peaceful relations among states.

50. Having said that, his delegation reiterated that all unilateral extraterritorial laws that imposed coercive economic measures contrary to international law on corporation and nationals of other states should be repealed. His delegation also called upon all States not to recognize and to reject unilateral extraterritorial coercive economic measures illegitimately imposed by any State against third parties.

51. Finally, he mentioned the significance of continuing study on legal implication of extra-territorial application of national legislation on sanctions imposed against third parties. His delegation hoped that the study could recommend that some measures be jointly taken by Member States in their effort to eliminate unilateral extraterritorial coercive economic measures as means of political and economic compulsion.

52. The **Delegate of Islamic Republic of Iran** expressed his sincere appreciation to the Secretariat of the AALCO for preparing the report on "The Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties". He stated that his delegation found the report as a useful and informative document which touches upon such a matter of high significance. He also expressed his thanks to the Government of Mauritius for providing information and materials on the topic and urged all the Member States to provide such relevant information and materials to the Secretariat.

53. The delegate observed that in an era of rapid and unprecedented changes, the world needed peace, security and stability, which could be strengthened through the collective responsibility of countries and also through, inter alia, respect for sovereignty, rejection of interference in the internal affairs of other States, refraining from compulsion and intimidation, as well as the creation of an enabling environment for replacing conflict and unequal relations with dialogue and negotiations. Coercive economic measures as a means of political and economic compulsion, in particular through the enactment of extraterritorial legislation, were not only against the well-recognized provisions and principles of international law and the Charter of the United Nations, but also threatened the basic fabric of international peace, security and stability and violated the sovereignty of States. They also impeded and constrained settlement of disputes through the promotion of mutual dialogue understanding and peaceful means.

54. Unilateral measures with extra-territorial effects have different forms and manifestations. In the course of past two decades, they had been imposed against almost 80 countries, mostly from developing world. The form and applying method of such measures have changed with the passage of time, but their nature had remained unchanged. He noted with regret that the initiators of these unlawful measures seemed to be even more reluctant to abide by the rule of international law by revising their previous decisions.

55. The delegate was of the view, unilateral sanctions and extraterritorial measures sanctions against other countries were inadmissible under international law and flagrantly constituted a direct interference with the ability of the third States to cooperate with others and carry out their foreign trade. From the legal point of view, it violated various principles of international law, *inter alia,* non-interference in internal affairs, sovereign equality, freedom of trade, and peaceful settlement of disputes, and presented a serious threat to world peace and security, the fact have been repeatedly reflected in the numerous resolutions of the different organs of the international community, particularly in the resolutions adopted by the UN General Assembly and ECOSOC.

56. He also mentioned, in this regard, both "the Declaration on the Inadmissibility of Interference in the Internal Affairs of States and the Protection of their Independence and Sovereignty", adopted on 21st December 1969, and "the Charter of Economic Rights and Duties of States" adopted on 12th December 1979 which stipulated that "no State may use or encourage the use of economic, political or any type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind."

57. The delegate observed that based on these principles and facts, the international community, inclusive of both developed and developing countries, had vigorously reacted to these unlawful measures and practices. As an example, the reaction of the European Union to the adoption of so-called the Kennedy-D'Amato Act by the US Senate against Iran and Libya in 1996 is noteworthy. The Delegate quoted from a letter addressed to the initiator of that Act, by the EU that states, "we find it unacceptable that companies incorporated in and operating from European community would be threatened by unilateral US sanctions when maintaining legitimate business relations with Iran and Libya. We reiterate our opposition that the US had no basis in international law to claim the right to regulate in any way transaction taking place outside the US".

58. Further, the South Summit, held at Havana, and the recent Ministerial Meeting of the Coordinating Bureau of the Movement of Non-Aligned countries, held at Durban, South Africa, had called for the elimination and rejection of coercive economic and extraterritorial implementation of such laws against developing countries. He stated that simultaneously, an increasing number of voices in multilateral forums, regional bodies and the private sector had joined the international community and called for the total elimination and lifting of unilateral, extraterritorial and other forms of coercive economic measures.

59. The delegate stated that based upon the above-mentioned facts and reasoning, his Government was of the view that such coercive measures had a serious adverse impact on the overall economic, commercial, political, social and cultural life of the targeted countries.

60. To this effect, he stated that his country, as one of the affected countries, reserved its right to pursue its financial and intellectual claims and lodge its complaint against Governments enacting those measures, through the adoption of concrete actions. All countries should, in the true spirit of multilateralism and sincere observance of international laws and regulations, avoid resorting to and enacting such measures. He observed that his delegation, appreciated the efforts of the AALCO in this respect and would require the Secretariat to retain the item of extraterritorial application of national legislation on the agenda of the future Session of the Organization with the view to carrying on and enriching the already-conducted extensive study of the issue.

61. The **Delegate from Myanmar** was pleased to see this item on the agenda as a deliberated item in the Forty-Third Session. She recalled this item had been discussed during the Thirty-Eighth, Thirty-Ninth and Fortieth Sessions of the Organization. She maintained the view that Extra-Territorial Application of National Legislations contradicted several norms and principles of contemporary international law.

62. Enumerating the experience of her country she said it had been the target of such laws either in the form of Public Law, Executive Orders or as a law of a State in a country. These laws were intended to stop the sovereign rights of a targeted State from obtaining rights that were legally entitled to it under the Doctrine of Sovereignty. These legislations are imposition of political pressures on it and had been used as a means of achieving policy objectives. Sanctions were blunt weapons and only worsened members of the population of the country against whom they were imposed.

63. Further, she said that sanction was a prohibition or restriction and was inconsistent with Article XI:1 of the GATT. Unilateral sanctions could not be justified under Article XXI (c) "obligations under the United Nations Charter". Unilateral sanctions were against WTO provisions. It blocked the free flow of international trade and were contrary to the concept and practice of free Trade Area Agreements. She said, Myanmar had not promulgated or applied any law or order that might affect any other country and therefore would like to reiterate that member States "reject promulgation and application of this form of legislation."

C. An Effective International Legal Instrument Against Corruption

64. **Amb. Dr. Ali Reza Deihim, Deputy Secretary-General** of AALCO while introducing the document no. AALCO/43/BALI/2004/SD/S 12, prepared by the Secretariat on this item said that the Report provides an overview of the UN Convention against Corruption and the developments at the High Level Political signing Conference held at Merida, Mexico. A comparative table on the modifications made in the draft and final text of the Convention by the Ad Hoc Committee during the negotiating sessions

was also included in the Annexure. To facilitate the AALCO Member States, the Secretariat had also prepared a CD Rom containing Corruption Documents.

65. After highlighting the initiative taken by the UN General Assembly in preparing the UN Convention against Corruption, which was opened for signature at the Merida High Level Political signing Conference, he said that 107 countries had so far signed the Convention and as the magical number of 30 ratifications was not large, the Convention would come into place very soon. He noted that Kenya and Sri Lanka, two of AALCO Member States, were the first countries to ratify the Convention.

66. Turning to the substantive aspects of the Convention, he said that the Convention commits States parties to take a number of measures and standards, domestically and internationally, to implement the provisions of the Convention. In the light of the Convention's global application and acceptance, and in view of the multifaceted nature of the phenomenon of corruption and the consequent difficulty of constructing a legal definition, the Convention adopted a descriptive approach, covering various forms of corruption that exist now, but also enabling States to deal with other forms that may emerge.

67. Further he noted that the Convention breaks new ground with its provisions on prevention and asset recovery. Being a United Nations Convention, it had a potentially universal scope of application, differently from other existing instruments. He then highlighted some of the salient features of the Convention included in the chapters - Preventive Measures, Criminilization and Law Enforcement, Asset Recovery etc. He felt that without effective and good faith implementation of the provisions in these chapter, the real root causes of corruption and its devastating consequences could not be fought.

68. He finally concluded that AALCO was looking forward to establish close relation with the UNODC to initiate joint programmes for promoting wider ratification of the Convention among the Asian-African countries. He also hoped that the Asian African countries would be in the forefront in the ratification of the Convention and in enacting implementing legislation. In this context, he suggested that the AALCO Secretariat could organize a workshop/seminar on the UN Convention against Corruption for the purpose of dissemination of information regarding the legal implications of the Convention for the benefit of the Member States.

69. The **Delegate of United Republic of Tanzania** thanked and congratulated the Secretary-General and his staff for a coordinated work which was contained in the exhaustive and illustrative report on the work of the United Nations Ad Hoc Committee for the negotiation of an instrument against corruption.

70. The delegate said that the present Millennium of globalization must be grounded on equality, justice, fraternity, peace and concord, attributes which were founded on justice and a society that was corrupt cannot be just; an unjust society cannot be peaceful, nor could it embrace fraternity, or sustain peace and concord. An effective regime for the prevention of corruption required a macro definition of corruption to encompass a

workable relationship on the subject across the Member States; create an effective mechanism for tracing the suspects around the globe, apprehend them and bring them to justice wherever justice would be available, and that would also deny them the enjoyment of the proceeds of their corrupt conduct by making possible, the tracing of proceeds of crime, and subject to the provision of costs, return them to the countries of origin.

71. He felt that the definition of bribery in the Instrument was of particular interest and the innovation of an offence of bribery in respect of foreign officials was timely. Nevertheless, apart from creating the offence, the respective conventions on Diplomatic Immunities required to be reviewed in order to lend assistance to the investigation and prosecution of those officers. This Instrument should also contain provisions, which would allow access to information that can otherwise be protected by diplomatic immunity, in order to allow practical investigation of such offences.

72. Criminalization of corrupt conduct in the practice of International Organizations especially in the question of lending aid to the developing countries, should also address the conditionalities which were imposed by them as a prerequisite for discharging their obligations to some of the countries, where such conditionalities were subjective, unreasonable or un-implementable and were against particular countries. This area was required to be addressed very carefully in order to see whether some of these conditionalities were not merely intended to create loopholes for corruption.

73. The tracing of evidence, surrender of accused persons, exchange of prisoners and sharing and repatriation of proceeds of the crime of bribery was another area of concern. It was his view that an effective instrument against corruption must be self-executory. It must bind State parties to extradite; yield evidence and subject to costs and legitimate claim to the share of the proceeds, to repatriate the proceeds to the entitled Member State and on the same basis of this instrument, to expect reciprocation from other Member States. It should be possible to make use of the already existing schemes in the respective areas such as the Commonwealth etc, and most specific all joining efforts in combating the offence.

74. The other area of concern was bribery by private sector, especially in relation to procurement by public, of goods and services. Lastly, he stated that he always trusted the Secretary-General as an important link between AALCO and States for articulating the viewpoint of the Member States before the United Nations Law making organs and ad hoc bodies like this Committee. He once again complimented and congratulated the Secretary-General and his Deputies for consolidating the views which were expressed at the past sessions, and believed that he would continue to do so in the next ones until a comprehensive, practical and effective instrument was realized.

75. The **Delegate of Sri Lanka** identified the negative impact of corruption not only on the moral values of the State but also on the economy, investments and very specially the adverse effect on the poor of the State. Corruption was an issue inter-related to organized crime of all forms as well. In brief, corruption destabilizes a State and brought development to a standstill. She said that Sri Lanka recognizing the importance of

combating corruption at both the domestic and international level had become a signatory to the United Nations Convention Against Corruption and was proud to state that Sri Lanka had also ratified the Convention.

76. Sri Lanka was presently reviewing the domestic legislation to introduce new enabling legislation in conformity with the Convention. She also recognized the importance of entering into Mutual Assistance Treaties to effectively implement the proposed new laws. A special Cabinet Sub Committee was monitoring the drafting of the new laws to ensure that the proposed legislation was introduced early into the Sri Lankan Statute. She appreciated AALCO for the inclusion of 'An Effective International Legal Instrument Against Corruption" into the Agenda of the Forty-Third Session of AALCO.

77. Finally, she said that the forward march of the Member States in combating corruption at the domestic and international levels was encouraging and supported the Member States to achieve the objective, as partners in the march against corruption.

78. The **Delegate of Mauritius** said that corruption constituted a serious threat to the economic development of a country. He felt that there should a concerted global effort to fight corruption. The adoption of the UN Convention against Corruption was in the right direction.

79. In this context, he said that Mauritius had enacted the Anti Corruption Laws before the beginning of Merida Conference and also had established a Independent Commission against Corruption. The Commission was composed of a Chairman and two deputies.

80. One of the interesting feature of Mauritian law was that the Commissioners were appointed by a panel of three highly placed personalities in a democracy. They were the President, the Prime Minister and the Leader of Opposition. The appointment was made on a unanimity basis and not on a majority basis. The rationale behind such procedure was fairly obvious. It was to ensure that the opposition had a say in a matter of such public importance and at the same time ensure that the right balance was struck between government and opposition and neither party could exploit the law to its advantage.

81. The Independent Commission had the power of search, requisition of bank statements tapping phones etc., all the powers were exercised within the parameters of the law i.e., by order of the court. It provided for mutual legal assistance, asset confiscation and money laundering.

82. In a general point of view, he said that the problem of corruption was a global one where the north and south were equally affected. The tragedy, however, was that where ever the subject was brought up there was a tendency of finger pointing, invariably by the North towards the South. This practice seemed to ignore the fact that it takes two to commit an act of corruption. Before indulging in to finger pointing one should start taking active measures to discourage or eradicate corruption by adopting effective law to return assets misappropriated through corrupt practices.

83. He said that the African leaders were fully conscious of the threat of corruption and had in the context of the NEPAD adopted a Peer Review Mechanism to ensure that States in Africa promote and practice good governance in the conduct of their national affairs. Ghana, Mauritius, Kenya and Botswana had volunteered to the Mechanism. This was welcoming measure and was a proof that States in Africa were prepared to be scrutinized by their peers. The adoption of the Peer Mechanism was a ground breaking and historic measure.

84. The **Delegate of Thailand** said that since he was taking the floor for the first time, extend, on behalf of the Royal Thai Government, his heartfelt congratulations to His Excellency, Professor Dr., Yusril Mahendra, the Minister of Justice and Human Rights of the Republic of Indonesia, upon his election as the President of the Forty-Third Annual Session of AALCO. He also expressed his sincere appreciation to the Government of the Republic of Indonesia for its warm hospitality and for hosting this important gathering of AALCO in this beautiful Island of Bali. He thanked the AALCO Secretariat for its efficient preparation of documents necessary for the deliberations of the session. He also welcomed South Africa as the forty-seventh member of AALCO.

85. Corruption affects all countries, particularly the developing ones. Furthermore, in the era of globalization, the fight against corruption could no longer be an isolated act of each country. He was pleased to see that the issue of corruption was included in the agenda of this AALCO's annual session. He felt that regional cooperation in this matter by the Asian and African States would help to further promote the cooperation at the global level in the fight against corruption, which would be beneficial to the international community as a whole.

86. He stated that one of the most important policies of Thailand was to eradicate narcotic drugs, poverty, and corruption, since it was realized that these three issues were major obstacles to genuine development and well-being of the people. As far as corruption was concerned, Thailand attached great importance to prevention and suppression of corruption in both the public and private sectors. The present Thai Constitution, which had been in force since 1997, had also stipulated the establishment of agencies and mechanism to combat corruption.

87. The independent National Committee on Counter Corruption was the foremost agency in this regard. Elected by the non-partisan Senate, the National Committee on Counter Corruption was guaranteed of its political independence. To date, it had investigated and taken cases against a great number of politicians of various portfolios and high-level government officials. The Supreme Court of Justice's Criminal Division for Persons Holding Political Positions had been set up to deal specifically with corruption cases of high-ranking politicians. It had passed several important judgments. These independent agencies must be seen truly effective in administering their constitutional power. Furthermore, the Thailand Government was in the process of setting up a new agency within the Ministry of Justice to complement the work of the Counter Corruption Committee to investigate corruption cases of lower ranking government officials.

88. Many other pieces of legislation had also been passed to guarantee transparency in the government. The Freedom of Information Act guarantees the public access to government documents. The Administrative Court Act sets up administrative courts to guarantee transparency in administrative decisions. The Act against Collusion in Public Procurement guarantees transparency in government procurement procedures. The Anti-Money Laundering Act and the subsequent setting up of the Anti-Money Laundering Office four years ago had been an effective instrument against both drugs and corruption. These are but a few measures Thailand had implemented to fight against corruption. In addition, a lot of efforts had been made at all levels to raise public awareness among Thai people. The Transparent Thailand Campaign had been launched involving all levels of national and local administrations and the public in general.

89. Thailand was among the countries that had signed the United Nations Convention against Corruption during the High-Level Political Conference held in Merida, Mexico on 9-11 November last year. This Convention had a provision on the suppression of transnational corruption and exchange of information, including cooperation to increase the capacities of personnel, which should be beneficial to Thailand in its attempt to fight against corruption in a comprehensive manner.

90. At present, the Ministry of Justice of Thailand had established a committee to consider the obligations of the Convention in order for Thailand to become a party. He hoped that once the internal process had been complied with, Thailand could soon become a party to the Convention.

91. Despite some criticism against some of the provisions of the Convention, Thailand still believed that the Convention would serve as an efficient instrument for global cooperation against corruption which would benefit the people around the world. He said that his delegation was looking forward to exchanging views and experiences in this matter with all members of AALCO.

92. The **Delegate of Nigeria** said that this agenda item was very important and would continue to urge AALCO to press hard towards the eventual triumph of the United Nations Anti-Corruption Treaty until it was able to effectively prevent and suppress the scourge of corruption afflicting our economic, social and political developments.

93. He said that Nigeria, during her short democratic dispensation, had taken firm measures to combat corruption, including the establishment of anti-corruption bodies in each Ministry or Department with a view to enhancing transparency, accountability and due process in government financial dealings in both the public and private sectors. The Government was also intending to facilitate the tracking down of corrupt officials and their ill-gotten money stashed away in any part of the world.

94. As a nation whose resources had been plundered by successive military regimes, Nigeria had achieved modest success in the recovery of its ill-gotten wealth from some countries. The process was however, rift with very high technical and procedural bottlenecks. For this reason, Nigeria wished to call upon AALCO to ensure that no

country provided safe haven for illicit funds in its territory and such looted funds, wherever they are found, should be returned to the country of origin.

95. He felt that the UN anti-corruption treaty was a welcome development; however, the fight against corruption required a lot more than the signing of a Convention. Given the efforts of the Obasanjo administration, since its inception in 1999, Nigeria stood in a better position to inform that efforts made towards the recovery of looted funds were always bugged down by unrelated interests and technicalities. It was these technicalities that the Nigerian delegation called upon AALCO to carefully study the factors that had impeded the full realization of the return of looted funds to the country of origin. He further urged AALCO to ensure that this item was kept in the agenda of subsequent session for further consideration.

96. The **Delegate of Malaysia** said that Malaysia became the 37th Signatory State of the United Nations Convention against Corruption when it signed the said Convention on 9 December 2003 at Merida Conference Mexico.

97. The delegate said that Malaysia was concerned about the problems posed by widespread corruption. This menace endangers the stability and security of societies, undermines the values of democracy and jeopardizes social, economic and political development. Malaysia hoped that Member States could utilize this Convention as a binding legal instrument in fighting corruption in a more effective way.

98. Malaysia acknowledged that the fight against corruption was far from over. The signing of this Convention was only the first step. The task now was bringing this instrument to life as a meaningful tool in the fight against corruption. Upon ratification of the UN Convention against Corruption, States Parties should have the necessary legislation in place to ensure the effective implementation of the instrument and effective co-ordination amongst Member States. The breeding grounds of corruption will have to be identified and understood, and suitable counter-measures initiated without compromising the sovereignty of the concerned States.

99. Malaysia had enacted specific laws to deal with matters relating to corruption, including good governance and programmes on upholding the integrity of public and private officials. Domestic legislation on corruption, anti-money laundering, provisions on confiscation of illegal proceeds and provisions on international cooperation in criminal matters were already in place. The principal law to be utilized in implementing this Convention was the Anti-Corruption Act 1997. The Act provides the necessary legislative tools to give effect to the Convention. In addition, Malaysia’s Anti-Corruption Agency (ACA) was also established by an Act of Parliament with the aim of combating corruption by way of prevention, investigation and prosecution of offenders. The agency is an independent body which was able to carry out its functions effectively and free from undue influence. It had the necessary capacity to implement measures proposed under the Convention.

100. Further, the delegate said that the agency also examined, through its Preventive Division, the practices, systems and procedures of public bodies. This was intended to detect their vulnerability to corruption and to reduce the likelihood of the occurrence of corruption. Malaysia had formulated a National Integrity Plan to enhance awareness of, commitment to, and cooperation on integrity amongst the public and private sectors in its continuing war against corruption. To execute and implement the National Integrity Plan, the Malaysian Integrity Institute had been established.

101. With regard to the obligations under the Convention, the delegate said that Malaysia was able to give effect to all of its provisions except for the provision on bribery of foreign public officials and officials of public international organizations. In this respect, the implementation of this provision would require amendments to Malaysia's domestic legislation to criminalize acts of bribery by foreign public officials and officials of international organizations. The required amendments had been identified and action would be taken in due course.

102. Malaysia recognized that the fight against corruption required close cooperation among countries. In promoting cooperation, Malaysia had also commenced negotiation with other ASEAN Member Countries on Mutual Assistance in Criminal Matters Treaty for the consideration of other like-minded ASEAN Member Countries. Malaysia's proposal received positive support from other ASEAN Member Countries. In this respect, two rounds of discussions were held in Malaysia and the countries which were present gave valuable inputs for the improvement of the text. Malaysia expected that the proposed instrument would be concluded in the near future.

103. The **Delegate of Republic of Indonesia** while recognizing that preventing and combating corruption was sometimes a slow and painstaking process, Indonesia was exercising its utmost best to prevent and combat the scourge of corruption at all levels. Indonesia viewed that corruption transpired in a systematic and broad manner, which does not only dilute state finances, but also violates the rights of society in general to social and economic well-beings. Therefore, combating corruption must be dealt with by means of extraordinary efforts.

104. Among significant efforts initiated by Indonesia to prevent and combat the act of corruption was the establishment of National Commission on Combating Criminal Act of Corruption. It was an autonomous body and designed to be independent from political influence from any quarters. It possessed broad authority to investigate and litigate acts of corrupt practices. It also served as a preventive body, possessing the authority to examine the wealth of public officials at all levels. It also accepted reports and proclaimed status of fulfillment, promotes anti-corruption national education curriculum, disseminates information and programs on combating corruption, promotes anti-corruption campaigns to the public in general, as well as promotes bilateral and multilateral cooperation in the fight against corruption. In a not too distant future, an independent Anti-Corruption Court should be established with the authority to examine and judge criminal acts of corruption.

105. Given the fact that no nation was immune to corrupt practices, he said that Indonesia was in favor of the promotion of cooperation amongst nations at all levels and

relevant sectors to carry out the collective action against corruption. In this regard, Indonesia was currently undertaking necessary measures to ratify the UN Convention against Corruption. He believed that the Convention could serve as a strong and viable basis for international cooperation.

106. The entry into force of the UN Convention against Corruption needs thirty ratifications and so Indonesia encouraged the ratification by all States, since the effective implementation of the future United Nations Convention against Corruption are of great importance, not only to generate collective action against corruption, but also to facilitate prompt and expeditious recovery or return of assets derived from acts of corruption to the country of origin. During the negotiation of the Convention, the States had witnessed with great dismay some implacable attempts to put conditionality for the return of assets. Therefore, Indonesia urged AALCO Member States to not tolerate any attempts to use political consideration and determination as conditionality and political tool to agree to international cooperation in any forms of technical, legal or economic assistances, including assistance for recovery and return of proceeds of corruption to the country of origin. Assets derived from acts of corruption belong to the society of the country of origin and therefore it was only fair and logical that it should be promptly returned to the country of origin.

107. He said that Indonesia encouraged AALCO Member States to promote cooperation in strengthening national, regional and international capacity building in the fight against corruption, particularly in the fields of law enforcement, exchange of information, the establishment of networking, and anti-corruption campaign. In light of the importance of cooperation in law enforcement, his delegation urged AALCO Member States to initiate cooperation in the empowerment of law enforcement agencies and personnel; and in the development of legislation; quality of legal service; and criminal justice system. It was the view of Indonesia that the public should be encouraged to actively participate in preventing and combating corrupt practices. Hence, it was imperative to socialize the end result of corrupt practices to the public so as to raise public awareness and further promote the participation of the society.

108. Bearing in mind that information and best practice in combating corruption should be accessible to public as reference tool, AALCO Member States need to seek effective mechanism for the exchange of information and sharing of best practices and lessons-learnt. The development of model legislation or code of conduct or agreement/treaty on extradition and mutual legal assistance in criminal matters would also serve AALCO's common endeavors. In order to generate global endeavor against corrupt practice, Indonesia proposed the establishment of a networking amongst relevant national and regional task forces or offices. He recommended AALCO Member States to initiate the establishment of such networking, including the organization of seminar as proposed by the AALCO Secretariat.

109. He concluded by urging AALCO Member States to disseminate, sign, and ratify the UN Convention Against Corruption, or incorporate it with other measures against corruption into their national legislation, strategies and policies, and to take a concerted

and concrete action in combating corruption through the advancement of cooperation at all levels and relevant sectors.

110. The **Delegate of Kenya** said that it was the first country in the world to sign and ratify the UN Convention Against Corruption. Kenya had already put in place the measures for the ratification of the African Union Convention on combating corruption and was also consulting with the African Union Secretariat with a view to developing a mechanism for popularizing both instruments in the continent of Africa.

111. He said that the consensus achieved while adapting the UN Convention Against Corruption was a reflection of its global acceptance and application. The delegate said that in Kenya the issue of corruption was dealt in three levels:

1. Set up various Commissions to re-examine past cases of corruption. This involves investigations, tracing and receiving of looted public funds and grabbed public land.

2. In legal strategy, Kenya enacted the Public Officers Ethics Act, 2003. The main objective of the Act was to provide a legal basis for the return to meritocracy, hard work and professionalism in the public service. This was intended to stem the culture of corruption, nepotism, patriarchy and similar vices.

   The establishment of the Governance and Ethics Office in the Office of the President and a policy of annual declaration of wealth by public officers had resulted in more transparency and accountability when dealing with public funds.

   Kenya had enacted two statutes, the Anti-Corruption and Economic Crimes Acts, with an expanded definition of corruption to cover it in all forms, which had gone a long way in strengthening our legal framework against corruption, and which encompassed the purposes and spirit of the United Nations Convention Against Corruption.

   Kenya was therefore committed to the promotion of integrity, accountability, good governance and a policy of zero tolerance of all types of corruption as measures of preventing and combating corruption.

3. Advocacy was Kenya's third strategy in this endeavour. He welcomed an AALCO Seminar on this topic and urged the Secretariat to work out the modalities as soon as possible.

112. The **Delegate of South Africa** thanked the Secretariat for the sterling work they have done in preparing documents for the session. He felt that the commitment to eradicate corruption began at national level and what the UN Convention against Corruption had done was that it highlighted the destabilizing effects of corruption and brought to light some of the measures that could be implemented to eradicate it. South Africa in recognition of the destabilizing effects of corruption established under the

Officer of the National Director of Public Prosecution an independent 'anti-corruption' body called the 'asset forfeiture unit' which was regulated by a legislation focusing on organized crime.

113. He said that South Africa was of the view that the UN Convention against Corruption was a welcoming step for cooperation between States. It beholds upon States to take note of the instructive guide which the Convention provides in the fight against corruption by indicating measures such as establishment of an 'anti-corruption body' mutual legal assistance, asset forfeiture and criminalization of the act of bribery for State to wait for the ratification of the Convention against Corruption before implementing these measures. The implementation of measures to combat corruption demonstrate to the citizens and all those who do business in or territory that corruption was not tolerated and did not pay. South Africa was studying the UN Convention against Corruption with the view to ratify it.

114. The **Delegate of Kuwait** said that this item was very important, especially in the administration of a country. He said the Kuwait had legislations to prevent the problems of corruption. The domestic law of Kuwait provided for prevention of embezzlement, money laundering etc. He said that Kuwait had been an active participant in the Ad Hoc Committee meeting in Vienna and New York and had also signed the UN convention against Corruption at the Merida Conference. Kuwait, he said was looking in to the feasibility of implementing this Convention.[3]

115. The **Delegate of Pakistan** said that the document presented by the AALCO Secretariat was a useful document and of immense importance, especially to his region. He said that Pakistan had held a high level international conference early this year on the issue of different aspects of UN Convention against Corruption. The Government of Pakistan was in the process of ratifying the UN Convention and it had already signed the Convention.

116. He informed that the Pakistan had played a very important role in the drafting of the Convention and was now taking practical steps to combat this menace. These actions have borne fruits and some of the assets had been recovered. However, Pakistan strongly urges those countries where these looted assets are amassed may cooperate in returning it. There should also be cooperation to extradite such offenders committing such crime.

117. He further said that Pakistan had established a full fledged department known as National Accountability Bureau headed by the Chairman. The National Accountability Bureau has recovered huge amount of assets those were amassed by different forms of corruption. Finally, he said that his delegation urged all Member States to cooperate as it was vital to economic development of their region.

118. The **Delegate of Nepal** recalled what UN Secretary-General Mr. Kofi Annan, had aptly pointed out in his statement on the adoption by the General Assembly of the United Nations Convention against Corruption: "Corruption hurts the poor disproportionately-

[3] Statement delivered in Arabic. Unofficial translation from Interpreter's version.

by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice and discouraging foreign investment and aid."

119. Taking also into full account that corruption was a global problem posing a serious threat to the nation building and development of any nation, developed or developing, Nepal had actively participated in the negotiations of the UN Convention against Corruption. After adoption of the Convention, on 10 December 2003, Nepal had signed it, thereby covenanting not to take any action that would be contrary to and defy the objects and purposes of the Convention, and demonstrating its political will to combat corruption in the country and to work together with the international community to face the global challenge with a global response.

120. He said that Nepal was in the process of completing necessary domestic legal formalities for the ratification of the Convention. In order to effectively attain the basic objectives of the Convention and our mission to have a corruption free nation, Nepal was in a massive scale, revising the existing domestic legislations related with corruption control. Likewise, Nepal was also making required new legislations including anti-money laundering and transfer of illicit assets, for the purpose of implementing the UN Anti-Corruption Convention. This process would, basically, involve the making of necessary amendments to the existing law and new legislations, as required.

121. He said that in order to combat corruption efficiently and effectively, a system based on law had been set forth in his country. An independent anti-corruption institution, the Commission for the Investigation of Abuse of Authority, had been established under the Constitution of the Kingdom of Nepal, 1990 for investigation and prosecution of corruption cases. The Prevention of Corruption Act, 2002 and the Commission for the Investigation of Abuse of Authority Act, 1991 had been serving as strong legislative back ups for this institution. Most remarkably, provisions on the onus of proof lying with the accused and confiscation of misappropriated assets had also been envisaged to prevent corruption. Moreover, a special court was also being created to try cases relating to corruption.

122. He informed that His Majesty's Government of Nepal had also formulated an anti-corruption strategy to fight against the menace of corruption. However, considering the transnational, multifaceted and multi-disciplinary nature of the phenomenon and consequences of the crime of corruption, national efforts and mechanisms alone would not be sufficient. International cooperation in this regard would be highly desirable. In the light of the foregoing, the Delegation of Nepal would like to express full agreement with the observations made in the background study document. His country would fully support any initiative of the AALCO for establishing close relation with the UN Office for Drug Control and Crime Prevention to have joint programs for promoting wider ratification of the UN Convention against Corruption among the AALCO member countries and other Asian and African countries, as well.

123. The delegate said that his observation was that it would be much easier for the Member States to design and establish domestic legislative frameworks to implement the UN Convention if the AALCO develops a model law in this respect. Similarly, he strongly suggested that the AALCO Secretariat organize a seminar or workshop on the UN Convention with a view to disseminating information as to legal implications of the instrument. Further he suggested that the AALCO continue to pick up this agenda item, like the Law of the Sea, for deliberations in the forthcoming sessions, as well.

124. The **Delegate of the People's Republic of China** said that, thanks to the joint effort of the international community, the long-waited international instrument on combating corruption was at last concluded and China had signed the United Nations Convention against Corruption in Merida, Mexico, on December 12, 2003.

125. He said that the Chinese Government welcomed the conclusion of the Convention, and believed it to be of great significance. Being the first internationally-accepted instrument against corruption, this Convention obligates parties to join hands in this common battle, and therefore could be regarded as a rudimentary victory. The Convention had set up a couple of important mechanisms, among which international cooperation and asset recovery were the most important two.

126. The cooperation mechanism obliges State Parties to establish and strengthen international cooperation in such criminal matters as extradition, transfer of sentenced person, mutual legal assistance, transfer of criminal proceedings, law enforcement, and so on. It may help to prevent corruption criminals from eluding punishment by moving from one country to another. He felt this was the linchpin of the Convention. The mechanism of asset recovery consists of provisions concerning prevention and detection of proceeds of crime, measures for the direct recovery of property, recovery of property by confiscation, return and disposition of assets and so on. States Parties under the Convention were obligated to recover and return assets, properties and proceeds of corruption crimes to their original nations.

127. He said that this Convention was won by hard negotiations and nations common effort. This mechanism was crucial to the developing countries. Every year, a great amount of money, assets, property, proceeds of corruption crimes were transferred secretly to developed countries. Regrettably the developing countries had not been able to recover the assets effectively before, and the nations and peoples became the largest losers and victims. Now the mechanism may expedite the recovery and return of the assets, and would consequently protect national interests of State Parties, especially that of Asian and African countries.

128. He said that China attached great importance to combating corruption. The Chinese Government had taken a lot of measures to tackle the problem. Many corruption criminals have been brought to justice in accordance with relevant domestic laws and regulations. However, a great amount of national assets and proceeds were still being transferred, and quite a few corruption criminals had escaped, abroad, the destinations being mostly western countries. Without treaties on Extradition or Mutual Assistance

with them, it was extremely difficult for China to cooperate with them on a case-by-case basis.

129. Now the Convention may serve as the basis of cooperation. Nevertheless, as a matter of fact, West European and North American countries may be the most beneficiaries of input of assets of corruption from developing countries. The role the Convention was to play depends on the good political will of nations concerned. He said that China encouraged States to ratify the Convention as soon as possible so that it will enter into force as early as possible. He felt that Asian-African nations have common interests, same missions and one voice in combating corruption. He looked forward to his country cooperating with all nations on the basis of the UN Convention against Corruption.

D. Jurisdictional Immunities of States and their Property

130. **Mrs. Toshiko Shimizu, Deputy Secretary-General** introduced the item contained in the Secretariat Doc. AALCO/43/BALI/2004/SD/S 7.

131. She recalled that the International Law Commission had at its 43rd Session in the year 1991, adopted a set of 22 draft articles on the Jurisdictional Immunities of States and Their Property and recommended that the UN General Assembly convene an international conference of plenipotentiaries to examine the draft articles and conclude a Convention on the subject. Following this, the focus shifted to the General Assembly wherein the draft articles were reviewed by, first within a Working Group of the Sixth Committee and presently within the Ad Hoc Committee on Jurisdictional Immunities. The Sixth Committee has focused on resolving the outstanding substantive issues over the ILC's draft articles and evolve a consensus towards the finalization of the draft articles. In accordance with the General Assembly resolution 57/16 the Ad Hoc Committee on Jurisdictional Immunities was reconvened in February 2003 and it adopted its report containing the text of the draft articles on Jurisdictional Immunities of States and their Property, together with understandings with regard to some of the provisions of the draft articles. During the 58th session, the General Assembly decided to reconvene the Ad Hoc Committee to formulate a preamble and final clauses with a view to completing a Convention on Jurisdictional Immunities of States and their Property. Accordingly, the Ad Hoc Committee met at the UN Headquarters from 1 to 5 March 2004.

132. She informed that in accordance with its mandate the Ad Hoc Committee adopted the preamble and final clauses dealing with the status of annex, relationship of the present convention with other international agreements, settlement of disputes, signature, ratifications, entry into force, denunciation, depository and notifications and authentic texts. The Ad Hoc Committee further decided to recommend to the General Assembly the adoption of the draft United Nations Convention on Jurisdictional Immunities of States and Their Property. The Secretariat document contains the overview of the preamble and some of the important provisions of the final clauses.

133. The draft preamble adopted by the Ad Hoc Committee underlines that the concept of jurisdictional immunities of States and their property was an accepted principle of customary international law. Keeping in view the compromises reached in the process of resolving differences on various issues, it further clarified that those matters that were not governed by the proposed Convention were regulated by the rules of customary international law. Though it was the reiteration of existing principle, it reflected the differences in views on certain issues for which compromise solutions were adopted.

134. She pointed out that the adoption of text of the preamble and final clauses by the Ad Hoc Committee provisionally brought the work on the topic of Jurisdictional Immunities of States and their Property to an end, so far as its drafting process was concerned. However, the task ahead was for States to expedite the process of adopting the Convention and its entry into force. Therefore, it was hoped that the deliberations at this gathering would help the Member States to formulate common views that could be put forward during the proposed adoption of the Convention.

135. She further recalled that the Secretariat was mandated at the Thirty-Ninth Session to consider the feasibility of compiling national legislation, jurisprudence and practices of the AALCO Members on this item. She informed that the Secretariat has received response from nine countries in this regard – Bangladesh, Botswana, Cyprus, Japan, Mauritius, Myanmar, Qatar, Singapore, and Turkey. She renewed the request to the AALCO Member States to forward to the Secretariat, materials relating to national legislation, court decisions and any related materials, indicative of the jurisprudence and State practice on Jurisdictional Immunities, which would give the features of the new mandate of the Secretariat related to this subject which also fell within its main functions.

136. The **Delegate of Japan** acknowledged that the AALCO Member States played an active role in the codification of these important rules and said that the final text adopted by the Ad Hoc Committee was the best compromise achievable at present. He said that his Delegation fully endorsed the view of the Secretariat stated in the report which said "it is certainly a timely achievement, particularly in the context of globalization of economies. Where there has been a large-scale movement of investment, disputes arising out of such ventures need a legal mechanism. Therefore, early adoption of the Convention would facilitate the smooth flow of investments, as it would bring legal clarity in such transactions". The Delegate said that the Sixth Committee of the UN General Assembly was scheduled to take up the adoption of the Convention on Jurisdictional Immunity on 25 - 26 October 2004. He said that Japan sincerely hoped that the Convention would be adopted with the cooperation of the AALCO Member States. He also hoped that the draft resolution proposed by Japan for adoption would receive unanimous support of Member States.

137. The **Delegate of Republic of Indonesia** welcomed the successful completion of the Draft United Nations Convention on Jurisdictional Immunities of States and Their Property on 5 March 2004, which was the result of the laborious works and endless efforts of the International Law Commission, the Sixth Committee and the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property. The Delegate said

that the Draft itself served as the evidence of a global achievement in the development of international legal instrument that should be highly valued.

138. The delegate extended profound appreciation to the AALCO for its support to its Member States in the conclusion of the Draft United Nations Convention on Jurisdictional Immunities of States and Their Property, particularly at the meetings of the Sixth Committee and the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property. He said that his Delegation attached much importance to the fact that the future Convention would be designed to save from harm the immunity of a State and its property from the jurisdiction of the courts of another state and to define limits to the right of immunity for a state entering into commercial activities. He said that his delegation exceedingly treasured that the future Convention is formulated to ensure that States privileges and immunities be accorded to traditionally-granted diplomatic activities.

139. The delegate said that to stress the importance of uniformity and clarity in the application of jurisdictional immunities of states and their property, his delegation highly hoped that the future United Nations Convention on Jurisdictional Immunities of States and Their Property would trigger the development of international legal framework, strengthen the role of law, and enhance legal certainty on the issue of jurisdictional immunities of states and their property. His delegation believed that AALCO Member States hoped likewise.

140. The delegate said that AALCO Member States were encouraged to win over others that jurisdictional immunities of states and their property was generally accepted as a principle of customary international law. His delegation also recommended AALCO Member States to offer their concerted actions towards the harmonization of the legal instruments on jurisdictional immunities of states and their property. The delegate said that bearing in mind that the entry into force of the future Convention on Jurisdictional Immunities of States and Their Property needs thirty ratifications, his delegation urged AALCO Member States to take concrete steps to disseminate and sign as well as incorporate the proposed United Nations Convention on Jurisdictional Immunities of States and Their Property into their national legal instruments. The delegate said that his delegation urged AALCO Member States to extend their full support and to strongly commit to continue their utmost endeavour to work hand in hand for the effective implementation of the future United Nations Convention on Jurisdictional Immunities of States and Their Property.

141. The **Delegate of India** welcomed the adoption of the text of draft articles by the Ad Hoc Committee on Jurisdictional Immunity and hoped that the proposed Convention would remove the difficulties that arise when States enter into transactions. He said that his Delegation would support the adoption and they were flexible on the procedure for the adoption i.e., either through General Assembly or the diplomatic conference.

142. The **Delegate of the People's Republic of China** said that his delegation was delighted to see the adoption of the Draft United Nations Convention on Jurisdictional Immunities of States and Their Property by the Ad Hoc Committee on Jurisdictional

Immunities of States and Their Property, at the session held from 1to 5 March 2004 and it was another brilliant achievement by the Ad Hoc Committee since it settled all substantive issues of the draft convention last year. He said that they were convinced that it was time to move to the adoption of the convention.

143. He said that it turned out that the international society was in urgent need of a legally binding instrument on jurisdictional immunities of states and their property. At present, only a few states have special legislations in this regard. Even among those States that have established special legislations, their rules and practices vary from each other. More and more legal issues have therefore arisen in practice as a result of the increasingly intensified conflicts among different legal regimes of States. His delegation believed that the conclusion of an international convention would help unify and clarify the rules and practices in this field and contribute to the maintenance of harmony and stability in international relations.

144. He said that they were of the view that although the present text of the substantive articles of the Draft United Nations Convention on Jurisdictional Immunities of States and Their Property was not so perfect as to fully satisfy each and every State, it was perhaps the best outcome that might be accepted by all sides. It was widely supported to adopt a Convention on the basis of the present text during the 58th Session of the United Nations General Assembly and this year's session of the Ad Hoc Committee. He said that they were committed to work with other countries to facilitate the adoption of the draft convention at the 59th Session of the United Nations General Assembly.

145. The **Delegate of the Arab Republic of Egypt**[4] reminded that this topic had been on the agenda of the AALCO since Cairo session (2000) and said that AALCO should give conceptual direction on the topic. He appreciated the efforts of the Ad Hoc Committee for its endeavor to reach consensus. He said that they were in favour of adoption of the convention which would be applicable internationally.

146. The **Delegate of Kenya** noted that the draft Convention was a merger of the various provisions of diplomatic practice and custom that have over the years guided the relations of States inter se. Codification of this was a positive step towards creating certainty in State relations.

147. The Delegate said that the draft Convention even offered protection to foreign natural and juridical persons who might perform commercial transactions with States, and enables them to have recourse to judicial redress. Of course, the Delegate said, there were adequate safeguards to ensure that a State was not denied the dignity and immunity it so rightly deserved and which States had shown each other in the course of their relations throughout history. The draft UN Convention was a commendable instrument and Kenya commended the drafters for a job well done and would offer its support for the adoption of the same by the General Assembly.

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

148. The **Delegate of Malaysia** said that they were pleased to note the progress achieved by the Ad Hoc Committee on Jurisdictional Immunities of States and Their Property and the adoption of the draft articles, taking note that the preamble and final clauses of the draft articles have been formulated with a view to completing a Convention on Jurisdictional Immunities of States and Their Property.

149. The Delegate said that the formulation of the draft articles on Jurisdictional Immunities of States and Their Property by the International Law Commission was an attempt to solve the controversy surrounding the absolute immunity and restrictive immunity of States, particularly in relation to commercial transactions. Malaysia had participated in the deliberations of the Ad Hoc Committee on the draft articles and found the articles, as adopted by the Ad Hoc Committee, generally acceptable. He said that Malaysia, however, might have difficulty with regard to the provision under article 2(2) of the adopted text relating to the criteria for determining the commercial character of a contract or transaction. Malaysia was aware of the difficulty in bridging the gap on this issue and as such understood that the said article as adopted by the Ad Hoc Committee was a compromise and a way out of the controversy that has so long afflicted this provision.

150. In determining whether the contract or transaction was a "commercial transaction", the adopted article by using the word "primary" connotes that the "purpose test" was secondary to the "nature test" whereby the "purpose test" was dependent on the agreement of the parties involved or if it was the practice of the State of forum that the purpose test was relevant in determining whether the contract or transaction was a "commercial transaction". Malaysia was of the view that both the nature and purpose tests should be taken into account in determining the same, as the "nature" criterion alone did not always permit a court to reach a conclusion. An example of this was where a State entered into a contract for the supply of cement and the contract for cement was in order to build army barracks. The nature of the contract seemed to be a commercial transaction however, by looking at its purpose the act could be regarded as an act done in a sovereign capacity which was equipping the State's armed forces. The Delegate said that it was also to be noted that in determining cases on State immunity, Malaysian courts have applied both the nature and purpose tests to assist them in arriving to a conclusion on the form of the contract or transaction entered into by States. The Delegate said that based on these considerations Malaysia had continuously voiced its position on this issue during the deliberations of the said article.

151. The Delegate informed that Malaysia had also sought clarification with respect to the provisions under Articles 11(2)(c), 13(b) and (c) and 17 of the ILC draft and the Ad Hoc Committee had provided Malaysia with a comprehensive explanation on the Articles. The Delegate wished to express its appreciation to the Committee for the explanation which had assisted Malaysia in better understanding the articles and its scope.

152. The **Delegate of Sudan** said that they supported the general view advanced in the General Assembly during its present session and the previous ones to draft a binding

Convention rather than a less binding document in whatever form. He said that binding Convention truly enhances rule of law and legal certainty. He observed that the adoption of the convention would eventually develop binding rules governing and controlling the extra-territorial application of national laws which encode legal certainty. He said that they support the observation of the Malaysian Delegation on article 2 (2) of the draft convention. He noted that the criterion of the "purpose" of the commercial transaction was subordinated to the criterion of the "nature" of the transaction. However, he said that they would support the convention being a binding one.

E. Deportation of Palestinians and other Israeli Practices among them the Massive Immigration and Settlement of Jews in all occupied Territories in Violation of International Law particularly the Fourth Geneva Convention of 1949

153. **Amb. Dr. Wafik Z. Kamil, Secretary General of AALCO** introduced the item contained in the Secretariat Document AALCO/43/BALI/2004/SD/S 4. He recalled that this item was introduced on the AALCO's agenda in the year 1988, during Twenty-Seventh session, held in Singapore upon the initiative of the Government of the Islamic Republic of Iran. Since then the matter was being followed closely highlighting the violations of international law by Israel and with a view to upholding the rights of the people of Palestine under international law. He expressed concern that the enormous tragedy being faced by the Palestinians in the Occupied Territory was a result of flagrant violation of all principles of international humanitarian law, which was being continuously perpetrated by the occupying power Israel in total disregard of all the principles of international law. In fact it was a shame that single occupying power had the freedom to impose its will, its brutal laws on innumerable innocent civilians, who have waited for decades to have a State which they could call their own. Israel also continued to indulge in extra judicial killings of Palestinians. Recently within a span of four weeks occupying forces have assassinated Hamas religious leaders Sheikh Ahmad Yassin and Abdel Aziz al-Rantissi.

154. He recalled that the resolution 42/4 adopted unanimously last year at the Forty-Second session held in Seoul condemned Israel's continued acts of violence, use of force against Palestinians, resulting in injury, loss of life and destruction, coercive migration and the deportation in violation of Human Rights and the Fourth Geneva Convention of 1949. The resolution also expressed concern about the continuing dangerous deterioration of the situation in the occupied Palestinian Territories including Jerusalem and the severe consequences of continuous illegal Israeli settlement activities. The resolution expressed the hope for the success of the peace efforts exerted by the international community for the achievement of a just and comprehensive solution of the question of Palestine on the basis of Security Council Resolutions 194 of 1949, 242 of 1967, 338 of 1973, 425 of 1978 and 1397 of 2002.The recent Security Council resolution 1544(2004) of 19 May 2004 'called on Israel to respect its obligations under international humanitarian law, and insisted, in particular, on its obligation not to undertake demolition of homes contrary to that law'.

155. He expressed concern about the construction of wall in the Occupied Palestinian Territory and said that Israel's construction of wall was in grave violation and contravention of international law. Israel's refusal to accept the jurisdiction of the International Court of Justice for an advisory opinion in this regard vindicated the view that the construction of wall was arbitrary and was in flagrant violation of international law. He noted that world community has unequivocally opposed it and expressed grave concern about the potential humanitarian consequences of the construction of wall which in effect tantamounted to occupation of territory in defiance of all principles of international law.

156. While focusing on the plight of Palestinian refugees, he said that despite the efforts of the international community their condition remained appalling. He noted that the two-day conference held in Geneva on7-8 June 2004, addressing the humanitarian needs of the Palestinian refugees has made a declaration for the protection of Palestinian refugees. Delegates from over 91 countries and organizations committed the international community, United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the host countries to the continuing support of the four million refugees scattered across the Middle East.

157. He underlined that for more than fifty years, scores of resolutions of the General Assembly, Security Council and various other international and regional organizations including the AALCO underscored the importance of viable solution to the crucial issues related to the legitimate rights of Palestinians and their aspirations to live in peace and security with its neighbour Israel. He pointed out the Peace Plan of the Saudi Crown Prince Abdullah which was discussed at the Arab League Summit Conference in Beirut in March 2002. The Plan called for Israeli withdrawal from all territories occupied since 1967 and the return of Palestinian refugees to Israel in return for recognition of Israel and normal relations with all Arab States. He noted that the "road map" by the Quartet which envisioned a permanent two state solution to the Israeli Palestinian conflict, was also an important initiative and a historical window of opportunity opening up after a terrible period of death and destruction on both sides of the conflict. No previous plan had enjoyed such broad support of such important actors as this one did, the United States, Europe, Russia and the key Arab States.

158. He noted that the Asian African Legal Consultative Organization joined the international community and the UN Security Council in calling on Israel to respect its obligations under international law and to put an end to its assault against Palestinian people, which continued to result in unnecessary loss of life, homelessness and an uncertain future. He stressed that the AALCO also reaffirmed the established international consensus on the applicability of the Fourth Geneva Convention and other relevant international legal instruments to the occupied Palestinian Territories including Jerusalem, as well as to all the Arab occupied Territories by Israel since 1967.

159. The **Delegate of the State of Palestine,** at the outset, noted that Israel indulged in illegal activities inside the occupied Palestinian and Arab territories, such as forced deportations of Palestinians from their homeland, the expansion of the Israeli settlements

at the expense of the Palestinian land and the continuation of building the racist separation wall, coincided with Israel's obstinate persistence to continue its policies of extrajudicial killings of civilians and national leaders, expropriation of land and demolition of houses, in many cases upon the heads of the residents. While many political initiatives, regional and international plans were being discussed to resolve the Palestinian cause through peaceful political means and negotiations, the inexplicable paradox continued to unfold and the elected president of the Palestinian people was under a house arrest at the so-called 'Muqata" in Ramallah by Israel. He termed this all as Israel's adamant and recalcitrant continued disregard to the international community, UN resolutions, Geneva Conventions and references to international legality and legitimacy with utter impunity.

160. He noted that the Israeli gunships and American made "Apaches" had been striking and bombarding Palestinian villages and towns, refugee camps, their children, families and leaders on daily basis in violation of basic human values and was the culpable party in assassinating peace prospects but not the national Palestinian resistance against an abhorrent occupation which was recognized as a legitimate right by all temporal and religious laws and creeds on this planet.

161. He expressed his anguish at Israel's relentless allegations on President of the Palestinian people, making him responsible for the continuing deterioration of situation in the occupied territories. He alleged that Israel as a master in the game of deceit, inexorably continued to confuse the legitimate Palestinian resistance with international terrorism, blurring the picture, thus, it could have a free hand in exercising the worst form of terrorism against Palestinian people and leadership. He added that no less danger was the intellectual terrorism indulged by Israel, whereby perpetrating the persecution of thought and freedom of expression by labeling and terrifying people from expressing their thoughts and speaking their mind. He hoped that AALCO's resolution on the issue would contribute to the mobilization of international public opinion to expose the forces of darkness and to end the abominable occupation of the Palestinian territories.

162. The **Delegate of the Arab Republic of Egypt**[5] observed that the issue was being discussed at a time when there was a flagrant violation of rights of the Palestinian people. He said that as a legal body the focus was on the legal issues involved particularly the Fourth Geneva Convention of 1949. He said that in addition to violations of humanitarian law there were also violations of human rights. These violations were in the form of demolition of houses, detention of civilians, assassination of leaders, construction of wall, change of demography, attacks on women, children and old people etc. He pointed out that League of Arab States, NAM and other international organizations condemned these violations. While referring to the Arab Peace Initiative and the Road Map, he expressed concern about the situation of Palestinian people and said that Israel did not respect culture of peace. He hoped that they were looking forward to peace in the Middle East and to other countries to alert Israel on its violations of international law.

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[5] Statement delivered in Arabic. Unofficial translation from Interpreter's version.

163. The **Delegate of Malaysia** said that they viewed seriously and condemned any act which was in breach of international humanitarian laws governed by the relevant legal instruments. He said that Malaysia continued to be highly concerned with the Israeli practices on the occupied territory which continue to harm and displace many Palestinians on their own soil. He reiterated that they had always been supportive of the struggle of the Palestinian people and condemned the aggressive activities of the Israelis towards civilians in the occupied territory. Expressing concern about the recent construction of the Wall in the Occupied Territory and the escalating violence in the Middle East, he informed that Malaysia had been actively voicing its concerns in the General Assembly of the United Nations and submitted written statements and participated in the oral hearing of the International Court of Justice Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.

164. He observed that Israel continued to act in flagrant violation of international laws including United Nations Security Council and General Assembly Resolutions. He mentioned that the UN had made clear the legal rights and duties in the Israeli-Palestinian conflict in a series of widely supported resolutions, namely Resolutions 181(ii), 194, 242, 338, 34/70, 43/177, 476, 480, 1322, 1397, 1402, 1403 and the 17 resolutions adopted at the last 58th session of the General Assembly concerning the issue of Palestine. He pointed out that Malaysia also had categorically maintained that the Israeli practices in the occupied territory were in breach of the Fourth Geneva Convention Relating to the Protection of Civilian Persons in Time of War, in particular Articles 47, 49, 50, 52, 53 and 55. He underlined that it was their view that the international community had a duty to take steps, in accordance with Article 1 of the Fourth Geneva Convention, to secure compliance by Israel of the relevant provisions of international humanitarian laws.

165. He was of the view that the Palestinian issue warranted serious international commitment. He reminded that this issue was not an issue of religion but an issue of sovereignty and territorial integrity. He urged Member States of AALCO to enhance their efforts in enforcing the existing UN Resolutions on Palestine and supporting efforts towards achieving a lasting peace in the Middle East.

166. The **Delegate of Republic of Indonesia** expressed its deep concern about the continuing dangerous deterioration of the situation in the occupied Palestinian Territory and the severe consequences of continuous illegal Israeli settlement activities. He noted with a grave concern that for more than 35 years, Israel had administered a military occupation of the West Bank, the Gaza Strip and East Jerusalem in consistent and relentless defiance of international law. Therefore, his Delegation was of the view that all peace loving nations need to compel Israel to abide international law so that a just and equitable solution could be found for the Palestinian problem.

167. He welcomed the request for an advisory opinion submitted by the United Nations General Assembly (UNGA Resolution A/RES/ES–10/14 of 8 December 2003) on the question of what are the legal consequences arising from the construction of the Wall being built by Israel in the Occupied Palestine Territory, including East Jerusalem. He informed that Indonesia submitted its written and oral statement before the International

Court of Justice and argued that the construction of the Wall manifestly hampered the prospect of negotiation process. He said that Indonesia also emphasized that the advisory opinion of the Court could positively contribute to the peace process, since it could provide an authoritative and important guide. He opined that an impartial legal opinion of the Court on this question would provide a solid international legal ground ensuring that the negotiation process be fairly conducted in good faith.

168. He said that in the absence of a solid legal justification, the construction of the Wall could not be considered as a self – defense, since it did not meet the requirement of necessity and proportionality as provided by international law. It was unconceivable that the Wall could be considered as necessity, when Israeli forces already exercised military control over each and every large Palestinian town through checkpoints, curfews and closures. The construction of the Wall was apparently disproportionate and excessive. The collateral damage had become the rule rather than the exception of the actions taken by Israel.

169. He said that as far as international humanitarian law was concerned, Israel had taken a consistent position that the Geneva Convention was *de jure* not applicable to the Occupied Palestine Territory. However, this view has been strongly refuted by international community, particularly through General Assembly and Security Council Resolutions. Therefore, he reiterated that the claim of non-applicability of international humanitarian law in the Occupied Palestine Territory, including East Jerusalem should be categorically rejected. International humanitarian law, particularly The Hague Regulations and the Fourth Geneva Convention, applied to the conducts of Israel in the Occupied Palestine Territory. Israel owed obligations to the inhabitants of the West Bank and to the international community in relation to the right of the Palestinian people to self-determination.

170. He pointed out that Israel also argued denying the applicability of the international human rights law. He said that his delegation maintained that Israel was legally bound to apply international human rights conventions in the Occupied Palestine Territory. All norms and principles as provided by international human rights conventions should be respected. Israel was under legal obligation to stop its grave breaches of international human rights law and to bring all the perpetrators of the human rights atrocities to justice. International jurisprudence clearly supported this view. Human rights obligations should apply to persons within the territory or jurisdiction of a State, including where a State exercised control over persons outside its territory.

171. He further argued that international human rights law should also apply in times of both peace and armed conflict. International humanitarian law, though *lex specialis* in armed conflict, did not displace human rights law. It should complement the protection of international humanitarian law. His Delegation was of the view that the applicability of the regime of international humanitarian law during an armed conflict did not preclude the application of the ICCPR, nor did it preclude the accountability of States for official actions outside their territories – including in occupied territories.

172. He said that Indonesia consistently held the view that lasting peace in the Middle East required respect for international law principles and norms and impartial implementation of Security Council resolutions 194 (1949), 242 (1967), 338 (1973), 425 (1978) and 1397 (2002). The accurate and fair implementation of these Resolutions was essential, because they had rightly designed the workable settlement of the very core of the problem, namely, the creation of peace and the independent Palestinian State.

173. He underlined that Indonesia noted with a very deep concern that the Security Council was unable to adopt resolutions declaring illegality of the Israeli expansionist Wall and condemning extra-judicial killing committed by Israel. This situation constituted the failure of the Security Council to discharge its primary responsibilities to address the Israeli – Palestine issue. The inability of the Security Council appeared as a threat to the peace and security in the Middle East, since it would be an undoubted setback to the Palestinian – Israeli peace process. The "Quartet's Performance – based Road Map to a Permanent Two – State Solution to the Israeli – Palestine Conflict" was now at stake. He mentioned that his Delegation reiterated that there was an urgent need that the United Nations Security Council considered the flagrant and systematic violation of international law principles and norms by Israel, and to take all necessary measures to put an end to these violations.

174. The **Delegate of Pakistan** commended the comprehensive report presented by the Secretary-General on the subject as thought provoking. He expressed disappointment that no firm progress had been made in eliminating the flagrant violation of international law principles and the occupation of territories in violation of the UN resolutions. He condemned the atrocities inflicted by Israel, i.e. killing, detaining and destroying of properties of the innocent Palestinians, as clear violation of the principles of international law as well as the provisions of international instruments, including the four Geneva Conventions of 1949. He extended his Delegation's support to Palestine and strongly condemned and deplored continued suppression of right to self-determination of Palestinian people, despite the fact that this right had been recognized as *jus cogens* norm of international law. He reiterated his full support to the Palestinian Delegation in their struggle, in accordance with the resolutions of the United Nations General Assembly.

175. The **Delegate of Islamic Republic of Iran** said that in course of the past decades, Israeli actions and policies have turned the Middle East into a region constantly engulfed in a cycle of bloodshed and crisis.

176. Referring to the Secretariat report, he said that Israel since 1996 considered plans for the construction of a wall in the Occupied Palestinian Territory and the first phase of such a racist wall began in 2002. This regime declared the security reasons as the legal base of the plan, and unduly and unreasonably raised the theme of right to defend its citizens. It was without doubt that such a justification was baseless and there was no foundation for it in international law. In fact, the Wall must be seen in the context of the continued attempts by Israel to deprive the Palestinians of their inherent national rights, this time under the guise of security.

177. The Delegate referred to the report of the Special Rapporteur of the Commission on Human Rights and the report of the UN Secretary General to the Security Council, wherein it was mentioned about the humanitarian impact following the construction of barrier.

178. He said that his Delegation stressed explicitly on the applicability of the 'Fourth Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Times of War' to all Arab and Palestinian territories. The Construction of the wall by the Israeli regime constituted an intentional and flagrant violation of this Convention as well as other international instruments on humanitarian issues and human rights, and in total disregard to the numerous UN resolutions and statements. He also referred to the General Assembly resolution dated 8 December 2003, requesting the International Court of Justice for an advisory opinion on the legal consequences arising from the construction of the wall.

179. While focusing on the issue of assassinations of Palestinian leaders, he pointed out that Israeli occupying forces assassinated Sheikh Ahmad Yassin and Abdel Aziz al-rantissi on 22 March 2004 and 17 April 2004 respectively. He said that Israel once again invoked its right to self-defense against so-called terrorism, but this justification was unanimously rejected by the international community. He said that in their view these atrocious crimes were along the line of the nefarious attempts and were on going State acts of terrorism by Israel to hold on to the territory under its occupation and a people under its brutal control for many decades. He underlined that Israel, by committing the latest assassinations registered on their record yet another case of serious violation of the 4th Geneva Convention, which amounted to another war crime.

The Meeting was thereafter adjourned.