V. (iii) SUMMARY RECORDS OF THE THIRD GENERAL MEETING HELD ON 17TH JUNE 2003 AT 2:45 P.M.

Vice-President Her Excellency Ms. Janat B. Mukwaya in the Chair.

1. **Ms. Janat Baluzi Mukwaya, Minister of Justice and Constitutional Affairs,** expressed sincere gratitude to all delegations for electing her as Vice-President of the 42nd session of the AALCO. She also thanked H. E. President Agabi, Minister of Justice of the Federal Republic of Nigeria whose wisdom, experience and commitment made possible the successful conclusion of the 41st Session, held in Abuja. She expressed gratitude to Ambassador Kamil and the members of the AALCO Secretariat for their efforts and contributions in preparing for the session.

On behalf of the Ugandan delegation and on her own behalf, she conveyed fraternal greetings from the President of the Republic of Uganda, H. E. Y. K. Moseveni, the Government and People of Uganda to the President, the Government and people of Korea. She expressed deep appreciation for the kind invitation to attend the 42nd Session of AALCO and also for the warm hospitality extended to the Ugandan delegation.

She extended heartfelt congratulations to Amb. Dr. Wafik Z. Kamil on his re-election as Secretary-General of AALCO and assured him of her full support and co-operation to make his second term more fruitful. She then invited Amb. Dr. Ali Reza Deihim to introduce the item "**The International Criminal Court: Recent Developments**".

(a) The International Criminal Court: Recent Developments

1. **Amb. Dr. Ali Reza Deihim, Deputy Secretary-General** of AALCO introduced the Secretariat document AALCO/XLII/SEOUL/2003/S. 10 and Add. 1.

He described the entry into force of the Rome Statute of the International Criminal Court, on 1st July 2002, as a truly historic event, as on that date a permanent international judicial institution to dispense justice for international crimes came into being. As on 9th June 2003, the number of States Parties to the Rome Statute was 90. Among them twenty-five AALCO Member States had signed the Statute and out of which 13 had ratified it.

He stated that the Agreement on Privileges and Immunities of the International Criminal Court, as at 16 June 2003, had 29 signatories and the last signatory namely Cyprus was a member of AALCO family. In order to enter into force, the Agreement required 10 ratifications.

The ICC was inaugurated with the swearing in of the newly elected judges on 11th March 2003. The procedure for the election of the judges and prosecutor of the ICC was earlier accomplished at the First Session of the Assembly of States Parties (AOSP) in September 2002. The Judges were elected in First Resumed Session of the AOSP in

February 2003, while the Prosecutor was unanimously elected in the Second Resumed Session of the AOSP in April 2003. This meeting also forwarded its recommendation on the appointment of the Registrar, who will be elected in the plenary meeting of the judges, for a period of five years.

Out of the eighteen newly elected judges, three were from AALCO Member States. On 16th June 2003, the Prosecutor an Argentinean national Mr. Luis Moreno Ocampo was sworn in. Dr. Deihim stressed on ensuring the impartiality and independence of the Office of the Prosecutor.

After briefly dwelling upon these recent developments in relation to the ICC, he emphasized that it would be useful to exchange views on AALCO's role in the context of ICC. Among the 46 Member States, only 13 were Parties to ICC Statute. He said that it was the Member Governments who were the best judge and it was their sovereign decision whether to join ICC or not. However, he stressed it was desirable to know their concern about ICC. Free and open exchange of views in this regard could perhaps help to meet such concern.

He drew attention to the on-going work on the "crime of aggression" to be carried out by the Working Group on the Crime of Aggression constituted by the AOSP. It may be mentioned here that due to the lack of definition of the crime of aggression in the Rome Statute and in the Preparatory Commission, many States had refrained from joining the ICC. It was therefore important, in this context, to follow-up the work of the Working Group and for this purpose the desirability of convening a meeting of international criminal law experts from the Asian-African region to formulate an acceptable definition of crime of aggression which could be then sent to the Working Group.

Lastly, he mentioned about the UN Security Council Resolution 1487 of 12th June 2003, extending the immunity enjoyed by UN peacekeeping missions from nations that had not ratified the Rome Statute from investigation or prosecution for a further period of one year beginning from 1 July 2003. In this connection, he stated that the United States of America had entered into "impunity agreements" with 37 States.

2. The **Legal Adviser of the International Criminal Court, Mr. Phakiso Mochochoko** called upon the lawyers from Africa and Asia, the two regions that had contributed immensely in the establishment of the ICC, to explore mechanisms for supporting the crucial work of the first ever permanent international criminal judicial institution. He said they were uniquely placed for making the ICC a truly universal institution, not only through sharing of information and ideas, but more importantly by forstering a better understanding of the work of the Court, in its efforts to bring to justice those responsible for the most serious crimes of concern to the international community.

He said that the creation of the Court represented the realization of a strong consensus amongst States which was a remarkable achievement given the various interests and legal systems that contributed to the process of establishing the ICC. Once

operational the Court would not only be a principal means of combating impunity, but would also contribute to international peace and security, thus filling a significant void in the current international legal system.

Thereafter, he mentioned about the way in which the work was proceeding at The Hague in making the Court operational and putting it's various offices and the Court in place. He highlighted the fact that the Court has progressively continued recruiting highly qualified personnel ensuring equitable geographic distribution, a fair gender balance and representation of the principal legal systems of the world. The principle of universality, he said, was reflected in the composition of the Court, as there were 27 different nationalities in the Staff. Further, the ICC was making every effort to give representation to all States Parties in the recruitment process.

Thereafter, he proceeded to identify the main challenges that were inter-connected but could be grouped into (a) Strategic challenges; (b) Institutional challenges and (c) Operational challenges.

(A) Strategic Challenges: He said that making the ICC manageable and thus credible represented a significant challenge. Rendering international criminal justice involved investigation, prosecution and a trial. All prosecutorial action had to comply with the law set out in the Statute and the Rules of Procedure and Evidence. At the most general level this would mean that any investigation/prosecution must fully respect the core notion of the Statute: complementarity. In terms of this fundamental principle underlying the operation of the Court, primary responsibility for punishing crimes under the jurisdiction of the Court remained first and foremost with States. Only if States were either unwilling or unable to prosecute would the ICC assume jurisdiction.

He stressed that clear criteria must be developed which distinguished unwillingness and/or lack of ability to prosecute, and those criteria must become part of international diplomacy and legal language. It must be understood in each specific case that trials at the national levels would not provide an adequate response to clear violations of the Statute perceived by the Prosecutor.

However, if there are prosecutions, they must be done on the basis of a well thought thorough prosecution strategy. Within the limits of the independence of the Office of the Prosecutor and without giving the game away to the criminals that are to be prosecuted, that strategy must be communicated.

As regards the principle of complementarity, the Cout's decisions on the application of that principle would be an important test of its independence. It has to be seen how the Court handles matters of judicial cooperation as the ICC lacks the wide enforcement powers, which the Ad hoc Tribunals had under Chapter VII of the UN Charter. Most of the work of the ICC would be done through judicial cooperation mechanisms, which were not very different than those at the national level.

As regards trial, they must be fair, public and must take place before a competent, independent and impartial Tribunal without undue delay.

(B) Institutional Challenges: One of the major institutional challenges that was before the Court was the effective management by its troika-Presidency, Prosecutor and Registrar. Another institutional challenge concerned the working relationship with the Victim's Trust Fund and Counsel.

(C) Operational Challenges: As regards operational challenges before the ICC, he said that since the early days of the Advance Team, the ICC had been flooded with numerous communications from all parts of the world alleging violations of the Rome Statute. To deal with such a situation capacity would have to be created with latest information technology system which should lead to creation of a comprehensive case management system.

To ensure efficiencies in trial, he suggested it would be better if the pre-trial chamber could fly to the region as compared to flying hundreds of witnesses to The Hague.

Finally, he emphasized that the legitimacy and independence of the ICC were very closely connected to it being perceived as an efficient and well-run organization based on principles of flexibility and scalability which meant having in place effective strategies, sound institutional structure and operational support systems, as well as a steady budget drawing on all strategic planning capability and maturity of both – the Court's and State Parties will be the guarantor of the independence of the Court.

3. The **Delegate of the Arab Republic of Egypt**[*] stated that the ratification of the Rome Statute in less than four years time was a historic milestone achieved in the international justice system. He stated that his country had actively participated in the elaboration of the Rome Statute. Among the pending issues was reaching a definition of the crime of aggression based on UN Resolution of 1974. Caution was also needed to avoid controversial principles like right to humanitarian intervention, a matter that could hamper further ratifications of the Statute. He also dwelt briefly on the relationship between the Court and the Security Council, which primarily had the responsibility of maintaining international peace and security.

He hoped that at a later stage, the Review Conference expected to take place in 2009, could incorporate within the jurisdiction of the Court serious crimes such as terrorism, drug trafficking and the use of nuclear weapons.

4. The **Delegate of Indonesia** maintained that an overwhelming majority considered the crime of aggression as a serious international crime and incorporation of the same to the jurisdiction of the ICC would be very significant to its credibility and would ensure a balanced and realistic approach to ending the most serious international crimes.

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

In the opinion of his delegation, the definition of aggression adopted by the UN General Assembly Resolution 3314 of 1974 could be a sound basis and a point of departure for both general definition as well as for the selection of acts for inclusion in the definition. He also emphasized that the definition should be specific so as not to give rise to contentious interpretation and difficulties in proving the elements of the offence. His delegation was in favour of maintaining an illustrative list of acts of aggression as opposed to a generic approach, to ensure certainty and clarity in the elements of crime to be proven. He stressed that determination of an act of aggression by the Security Council as stipulated in Article 39 of the UN Charter should serve as a base for the ICC to exercise its jurisdiction.

The delegate stressed that in cases where the Security Council failed to determine the existence of an act of aggression, recourse may be taken to Article 96 of the Charter to seek an Advisory Opinion from the International Court of Justice.

He emphasized the AALCO's determination to uphold the principle of complementarity in the strongest sense and in line with the decision made by the Heads of States or Governments of the Non-Aligned Movement (NAM), in Kuala Lumpur, in 2003. He reemphasized the importance of safeguarding the integrity of the Rome Statute and the need to ensure the impartiality and independence of the ICC.

Although his country had not yet acceded to the Rome Statute, the process of accession would be carried out prudently and in conformity with the requirement of national development and the needs of Indonesian people. His delegation was of the view that it would be more 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 that his Government lacked commitment to cope with serious human rights violations and had taken strategic steps in facing human rights violations. The Indonesian National Law on the subject incorporates the fundamental principles and provisions of the Rome Statute, ICCPR and ICESCR and thus reflected his Government's determination to implement, promote and protect human rights.

5. The **Delegate of the Republic of Korea** welcomed the successful inauguration of the ICC, swearing in of judges and prosecutor and stressed that this whole process attested to the desire of the international community to achieve a world full of justice and free from impunity. The enactment of legislation to implement the Rome Statute in Korea was in its final stage. He believed there were two pending tasks to be accomplished at the initial stage of the Court to make it successful, first, the ICC should achieve universality of jurisdiction and for that he urged upon the AALCO Member States to be more responsive towards the future of the Court; and second AALCO should contribute to reaching an agreement on the crime of aggression, for which it was imperative that the issue be discussed and a proposal on its definition be presented to the Assembly of States Parties of the ICC.

He stated that his Government was willing to help those AALCO Member countries who had not yet ratified the Rome Statute in preparing for ratification and in drafting the implementing legislation.

6. The **Delegate of Nigeria** expressed his concern regarding the issue of immunities of some governmental personalities which appeared unresolved by some States and stated that this was one of the reasons why some States had not yet ratified the Rome Statute.

In Nigeria, a separate law was enacted which was neither a part of the Constitution nor its Criminal Code. He stressed that the existence of immunities in the States' constitutions, could not hamper the effective operation of the international crimes, contained in the Rome Statute. This was possible because if the person under immunity committed an offence he would not be charged by the municipal court but by the international court. He emphasized that the domestication of Rome Statute by a separate enactment, as done in Nigeria, was possible. He called upon the States that had not ratified the Statute to adopt this simple approach.

7. The **Delegate of the People's Republic of China** while appreciating the Secretariat study welcomed the inclusion of ICC amongst the item for substantive deliberations. She said that it provided an opportunity to AALCO Member States to discuss the developments, such as the election of judges and prosecutor, in relation to this important international institution. The delegate emphasized that the key to survival of the ICC would be the observance by it of the principle of complementarity in prosecuting for international crimes.

She welcomed the decision of Assembly of States Parties to constitute a Working Group on the Crime of Aggression and hoped that participation in the deliberation of this Working Group would be open to all the Members of the United Nations, its Specialized Agencies and the International Atomic Energy Agency.

Although China was not a Party to the Rome Statute, it joined in all the common efforts made by the international community for promoting peace and development.

8. The **Delegate of Japan** welcomed the entry into force of the Rome Statute and the inauguration of the Court in such a short span of time. She stressed that the focus should now be upon ensuring the credibility of the ICC so that it attains universality. Japan was also examining the Rome Statute to see how a compatible Japanese law could be enacted.

9. The **Delegate of Malaysia** complimented the Secretariat for its excellent report and said that it provided an excellent basis for discussion on the subject. He said that the establishment of the ICC was a significant development of international law to address war crimes, genocide, crimes against humanity and the crime of aggression. He hoped that the establishment of such impartial, effective, independent and universal International Criminal Court would ensure that all persons who have committed the most serious crimes of international concern would be brought to justice.

He stated that Malaysia had yet not acceded to the Rome Statute as it had inter alia concerns relating to (a) Effect on national sovereignty by virtue of principle of complementarity- In this regard the Malaysian concern was that the ICC would itself determine whether a particular State was unwilling or genuinely unable to carry out the investigation or prosecution and this subjective interpretation by the Court would result in the sovereignty of a State being comprised if the Court determined that the State has not compiled with what the Court deemed to be "willing" and "able"; (b) Effect on the national legal system- The Malaysian concern was that the definition of "the most serious crimes of international concern" namely crimes of genocide, crimes against humanity and war crimes, adopted in the Statute, was far more broader than those recognized in customary international law. This vague and broad definition would give the Court an unfettered ability to decide when an alleged crime was within the jurisdiction of the Court. Further, wide definition of "crimes against humanity" might be against some domestic laws of Malaysia, in particular, the Malaysian preventive laws which were intended to safeguard national security and public interest.

On the definition of the crime of aggression, he said that Malaysia was in favour of a definition that was specific so that it would not give rise to contentious interpretation and difficulties in proving the offence. His country was in favour of maintaining an illustrative or definitive list of acts of aggression as opposed to a generic approach to ensure certainty in the elements of crime to be proven.

He supported the idea of convening a meeting to study the legal and constitutional points required for the ratification of the Rome Statute, as it would provide a useful forum for AALCO Member States for exchange of views. His delegation also supported the suggestion for convening of an inter-sessional meeting of experts of international law from the Asian-African region that could put together an agreeable definition of the crime of aggression, which could be later on presented to the Sub-committee of the bureau of the Assembly of States Parties for consideration.

(b) An Effective International Legal Instrument Against Corruption

The Meeting thereafter took-up the next item for consideration **"An Effective International Legal Instrument against Corruption".** The Chair invited Amb. Dr. Deihim to introduce the Secretariat Report of the agenda item.

1. **Amb. Dr. Ali Reza Deihim, Deputy Secretary-General** introduced the document no. AALCO/XLII/Seoul/2003/S.11, prepared by the Secretariat on this item. He said that the document provided an overview of the opinions and views of the geographical groups and delegations, in order to indicate the development of the drafting UN Convention Against Corruption in the Meetings of the Ad Hoc Committee until its fifth Session held in March 2003.

He recalled that the process of developing an international legal instrument to combat corruption gained momentum, with the adoption by the General Assembly

resolution 55/61, at its 55th Session, which among others provided for the establishment of an Ad Hoc Committee to carry out the negotiations for the conclusion of such a convention under the United Nations auspices.

He said that the Ad Hoc Committee had till March 2003 convened five sessions. It has completed the second reading of the draft Convention at its fourth Session and at its Fifth Session, held in Vienna, from 10 – 21 March 2003, initiated the third reading. It was expected to complete it at the Sixth Session to be held from 21 July to 8 August 2003. It is understood that the diplomatic conference for the adoption of the United Nations Convention against Corruption had been proposed to be held later this year in Mexico.

The completion of the third reading at the Sixth Session of the Ad Hoc Committee as expected should finalize the text of the Convention, which would be a real breakthrough in globalizing anti-corruption action. Though the Ad Hoc Committee has reached consensus on many issues, there still remained differences on certain provisions in a number of areas, for example, definition of public official, corruption, public servant, Affected State Party, recovery of assets, involvement of civil society, criminalizing private-to-private bribery, monitoring mechanism etc. It appears that a good deal of efforts was required to arrive at a consensus.

As regards key issues for consideration, he said that in the definition of "corruption" the major concern was on how broad the scope should be. Concerning the private sector, the question was to decide up to what extent the private sectors corruption should be covered under the Convention.

In the case of asset recovery, specific efforts have been made to enhance a common understanding of the various issues involved through the organization of a technical workshop. Such issues included the terminology used; the method of recovery (civil or criminal); to whom the assets should be returned to; who should decide the compensation of eventual victims; and who is to be considered the victim.

In the case of mechanism for monitoring the implementation of the future Convention, though there was consensus regarding the need for such a mechanism, differences centered on how this objective could be achieved either through this Convention or through the Conference of Parties to the Convention.

He said that all these outstanding issues would be further discussed during the Sixth Session of the Ad Hoc Committee. He hoped that the AALCO Member States participating in the negotiations would strive to find a way forward and thus help in reaching consensus.

He recalled that at the 41st session (2002), the Organization mandated the Secretariat to "monitor the developments within the Ad Hoc Committee", and work in cooperation with other Organizations like the African Union. He had the privilege of representing AALCO at the Ministerial Meeting convened by the African Union in September 2002. He commended the effort of the African Union in finalizing its

Convention on Combating Corruption and placing it before the Assembly of Heads of States and Governments for final adoption. The Convention deals with various aspects in a comprehensive manner including preventive measures. He was convinced that it would make a very useful contribution in combating corruption in the African Continent.

He said that the Secretariat has prepared an elaborate study analyzing the provisions of the draft convention which could provide a basis for concrete discussion and exchange of views and experience on areas of concern to AALCO Member States. That might give a boost to the work of the Ad Hoc Committee at its Sixth Session and help the Member States to reach a common position during the Diplomatic Conference. He said that if Member States consider it necessary the Secretariat could convene an inter-sessional meeting prior to the Diplomatic Conference.

2. The **Delegate of Islamic Republic of Iran** said that corruption in its diverse forms and various manifestations threatens the very basis of modern civilization and was condemned as an ugly sin in all religions including Islam. Corruption was a real barrier to sustainable development. He hoped that the UN Convention against Corruption would be finalized soon, which would form the cornerstone of the comprehensive campaign against corruption, provided that it contained certain specific features.

He said that the UN Convention should go beyond simple passive and active bribery and encompass at least the most rampant forms and manifestations of corruption, based on a broad definition of this concept. All public officials, whether elected or appointed should be held responsible for their corrupt acts. The Convention should establish strong mechanisms to tackle corruption in private sector and corporations.

He said that the criminilization of corruption would have only limited outcome if not accompanied with basic preventive measures. Prevention may include wide range of measures and activities aimed at studying, and finding practical ways and means to eliminate the underlying causes of corruption, e.g. poverty, low salary, moral and ethical deficiencies, inefficient and ineffective monitoring mechanism on the one hand and taking appropriate measures, both legislative and administrative, to strengthen the system of checks and balances and fill any legal or other gap which may tempt the vulnerable public official.

Further, he said that the Convention must also establish feasible modalities to facilitate the complicated and costly process of detection and recovery of funds and assets of illicit origin and to return them to the country of origin. The countries of destination should be held legally committed to cooperate with the victim states.

He felt that the success of the process of asset recovery may not be guaranteed unless all concerned state parties, particularly the countries of destination, be obligated to prevent bank secrecy from being used to obstruct criminal or administrative investigations that relate to crimes of corruption. Further, the victim states, usually developing country ones, should be afforded technical assistance and expertise which they urgently need.

He stressed that the Ad Hoc Committee should elaborate on follow-up mechanism and care should be taken not to compromise the integrity of domestic legal systems. Finally, he said that any follow-up mechanism as well as other provisions of the Convention, be drafted in a way to be responsive to logical concerns of developing states regarding the sovereign equality, territorial integrity and non-interference in the domestic affairs of State Parties.

3. The **Delegate of Kenya** said that his Government was deeply concerned about the spread of corruption and was determined to prevent and combat all forms of corruption. He felt that corruption undermines a country's democracy, human rights, economic well-being, growth and development as well as national stability. However, corruption could be eliminated or greatly reduced if proper controls and deterrence mechanisms were put in place.

He said that, as part of Kenya's effort to reduce or eradicate corrupt practices at national level, it has enacted the Anti-Corruption and Economic Crimes Act 2003 and the Public Officer Ethics Act 2003. In addition, Kenya has established special anti-corruption courts to deal with corruption cases before the judiciary. Further, a Public Complaints Office is also soon to be established to enable residents present their complaints to a national body. He said that Kenya was also in the process of implementing a comprehensive public sector integrity policy that envisages the management of public services through a merit-based, professional and impartial civil service.

On the international front, he said that Kenya would be participating at the forthcoming sixth session of the Ad Hoc Committee for the negotiation of the Draft UN Convention against Corruption. He appreciated the Secretariat's suggestions to focus attention at this meeting on the issues of definition of corruption, offences covered by the Convention, measures for enhancing international cooperation, asset recovery and mechanisms for monitoring implementation, and he said that Kenya was happy to share their position on these issues with other Member States through the Secretariat.

4. The **Delegate of Nepal** at the outset commended the initiative of the Secretary-General for including this item in the agenda. He said that the corruption hindered economic growth of the nation and prevention of corruption had become a major challenge for developing countries to achieve economic growth and fruits of democracy. He said that Nepal has always recognized the need for international collective action and has welcomed the recommendations and Declarations of the Global Forum II and III.

As regard UN Convention against Corruption, while expressing his strong support, he said that the proposed legally binding instrument being negotiated should encompass, *inter alia*, international cooperation in the field of prevention, criminilization, investigation, detention and penalization of the heinous crime of corruption. It should also deal with the cooperation in the field of information sharing, repatriation of proceeds

from corruption to the country of origin, judicial assistance, extradition of the accused or convicted among the corruption control and other law enforcement authorities.

In the domestic front, he said that growing effort has been made by introducing new legislation and instrument to combat corruption. For this purpose, Nepal has setup a special court to try cases of corruption.

Finally, he requested the AALCO Secretariat to actively follow the negotiations in the Ad Hoc committees and prepare a Model Law to incorporate the provisions of the proposed Convention in domestic law.

5. The **Delegate of Thailand** said the prevention and suppression of corruption was one of the solid foundations for political, economic and social development of Thailand. In the new "the Peoples Constitution" of 1997, the power and effectiveness of the Anti-Corruption Commission was strengthened. He said that anti-corruption, transparency and accountability were high on agenda of the Government of Thailand.

As regards the draft UN Convention against Corruption, he said that the most difficult aspect was the definition of "corruption" and felt that other outstanding issues may be resolved gradually if there was an agreement on the definition. He said that the provisions for international cooperation i.e., extradition, mutual legal assistance, was already in place and the only question to be raised was how to utilize them effectively.

Finally he said that the international legal instrument was only a tool to have general and universal rules to set standards for States and the most important element is the willingness of each States to prevent and suppress corruption in their own countries.

6. The **Delegate of Indonesia** said that Indonesian delegation attached great significance to a binding, effective and universal international legal instrument against corruption. The future convention against corruption should be a flexible and balanced instrument that would take into account the legal, social, cultural, economic and political differences of countries, as well as their different levels of development.

He said that constructive deliberations on this particular subject, in this Session, would enable to address matters of common concern and harmonize AALCO's position on the on-going negotiations for the prospective United Nations Convention against Corruption. This was the great momentum for AALCO Member States to reach consensus on some outstanding issues, such as definition of corruption, international co-operation, asset recovery, preventive measure and mechanism for monitoring implementation.

As regards the definition of corruption, which has been major concern during the negotiation of Convention against Corruption, the Indonesian delegation shared the views that the Convention should include a broad definition of corruption encompassing all forms of this crime with a view to criminalizing them and taking effective measures for their prevention and punishment. It should not only cover the corrupt practices in

government and public sector but also private sector, which impinge on the public interest.

He said that the proposed convention should focus on international co-operation through bilateral as well as multilateral arrangement. The international co-operation should give special emphasis on judicial co-operation in the investigation of cases involving corruption and special mechanism to tackle the transnational aspect of corruption.

As regards asset recovery, he said that the issue of returning assets to the country of origin was the country's inalienable right. Therefore, it was essential to establish effective international provisions facilitating prompt and expeditious recovery and return of assets to the country of origin. Moreover, his delegation reasserted that political considerations and determination to link preventive measures and recovery and return of assets should not become preconditions or political tools for implementing provisions of the proposed convention. It was his delegation's fervent hope that AALCO Member States would consider to fully support this important consideration.

As regards provision on prevention measures, he said that it should be largely advisory or optional in nature, while both criminilization and international assistance should be mandatory, subject to domestic law. However, while being aware of the differences in legal systems, the cultural diversity and the different stages of development of States, they should not be a justification to weaken the mechanism for preventive measures.

Concerning the mechanism for monitoring implementation, his delegation urged AALCO member states to support "the conference of the parties" mechanism, instead of the establishment of a subsidiary body and peer-review mechanism, since they can be politically used to intervene into internal affairs of other countries. Moreover, the establishment of subsidiary body may implicate financial consequences on the State Parties to the future Convention.

Another issue, which needed special attention, was bank secrecy. The future Convention against Corruption was also largely expected to harmonize regulations on bank secrecy. In addition, a convergence of the regulations would be able to serve the interest of countries that had lost significant assets as a result of corruption from over-protective national banking regulations.

7. The **Delegate of Pakistan** said that the developing countries of Africa and Asia are suffering from the ill effects of corruption and that his Government attached great importance to control it. He informed that in Pakistan new institutions in the shape of National Accountability Bureau and Accountability Courts have been established to check corruption. These institutions have proven to be much more effective than the earlier mechanism of anti-corruption establishment.

As regards the draft UN Convention, he said that Pakistan has been taking keen interest in the work of the Ad Hoc Committee and the delegation of Pakistan has participated in the negotiations very actively.

Thereafter, he highlighted some areas of special interest to Pakistan and other developing countries. The definition of "public official" in the draft Convention, he said, is of great significance to the developing countries and in this regard, Pakistan has proposed that the Convention should be applicable to "elected public office holders" as well. Highlighting the importance of this inclusive definition, he referred to the examples provided by the Marcos and Fujimori cases and the difficulties faced in repatriation of their ill-gotten wealth.

In the area of prevention, he said that though preventive measures were very important in combating corruption, providing detailed and mandatory obligations for States in disregard of the differences in their legal, political and social system may not be advisable. In respect of private sector, Pakistan was of the view that corruption in private sector should be covered by the draft Convention only to the extent that it affects public interest.

Another issue of great importance for Pakistan and other developing countries was the issue of "safe heavens" and off-shore jurisdictions. Further, he said that the provision should be made in the draft Convention for an effective mechanism for the detection and repatriation of ill-gotten wealth and favored expeditious repatriation of proceeds of corruption to the country from which such wealth was drained illegally and that countries may settle the issue of legal title etc.

Finally, on the question of Monitoring, he said that his Government like most of the countries is against the idea of "peer monitoring" or setting up a special subsidiary body other than the Conference of State Parties.

8. The **Delegate of Republic of Korea** observed that corruption jeopardizes the social, economic and political development of the community as much as it threatens integrity and fairness. Internationally it prevents sound and efficient investments and distributions of resources among countries, and particularly inflicts the greatest impact on the developing countries.

He said that his Government has very recently hosted the Global Forum III and the 11th International Anti-Corruption Conference (IACC), which was attended by 123 countries, as well as international organizations and experts from around the world. The Final Declaration adopted at the Global Forum recognized that corruption has evolved into a transnational and trans-sectoral phenomenon and called for the full support of the efforts undertaken within the United Nations for the conclusion of a UN Convention against Corruption.

While expressing his Government's full support for the early adoption of the UN Convention, he hoped that the outstanding issues such as the definition of basic terms like

"corruption" and "public official", the scope of the Convention, criminalisation vis-à-vis illicit enrichment and private sector corruption, recovery of assets of illicit origin, and monitoring mechanisms, would be resolved by further negotiation in the forthcoming meeting of the Ad Hoc Committee in Vienna.

He said that his Government was flexible in its position and was willing to compromise to reach an agreement on a draft Convention. In his view, the future convention should strike a balance between law enforcement and preventive measures, and between global standards and the autonomy of States. He elaborated on the key issues concerning the draft Convention.

The First was whether or not to define corruption itself. Some delegations still adhere to the need for an autonomous definition, while the large majority of participants now tend to believe that there was no need for such definition. The definition of corruption might be technically difficult to express in different jurisdictions. The Korean government would be willing to proceed without corruption being defined in the Convention.

The second salient point still at issue was the scope of offences covered by the Convention, or established in accordance with the Convention, which was related to "criminalization" in chapter 3 of the draft. In this chapter, to criminalize "illicit enrichment", which might be summed up as "a significant increase in the assets of a government official not to be explained in relation to his/her lawful earnings", could cause difficulties of a constitutional nature, since it involves the reversal of the burden of proof. In this respect, further in-depth study should be conducted to seek a solution to this problem. Support should also be given to the inclusion of private sector corruption in the Convention, as far as it was connected with the public interest, and the bribery of foreign public officials or officials of international organizations should be punishable to the extent compatible with the immunity and privileges accorded to them under international law.

Thirdly, emphasizing that international cooperation would be essential for the comprehensive fight against corruption, he said that the future Convention should therefore include binding and effective provisions on information sharing, mutual legal assistance and extradition, so that any safe haven for criminals may be eliminated.

As regards another key issue on which opinions differ was how to formulate the rules of asset recovery. The Korean Government, in principle, agreed to the recovery of assets and proceeds of illicit origin. However, it seems, it would be rather complicated to draft provisions satisfying all related parties, such as the requesting and requested states and individual claimants. Further legal and technical issues including the legal nature, status, title and classification of the assets/funds of illicit origin, and the legal effect of domestic judicial and administrative disposition, recognition and enforcement of recovery of assets would need to be examined.

Finally, as regards the mechanism for monitoring implementation, it should follow the model of the UN Convention on Transnational Organized Crimes (TOC) leaving decisions on its structure to the Conference of Parties.

9. The **Delegate of Malaysia** appreciated the comprehensive report prepared by AALCO Secretariat on the progress of the negotiation on the draft UN Convention against Corruption at the Ad Hoc Committee Meeting. He reiterated his Government's support for the conclusion of a comprehensive and internationally legally binding instrument against corruption encompassing all the aspects proposed in the draft Convention. Indeed, it had been playing an active role in the deliberations of the Ad Hoc Committee on the draft Convention and has attended all the Ad Hoc Committee meetings thus far.

Malaysia supports AALCO's view that corruption was an evil, which poses serious threat to the development of a country, and thus, it was absolutely essential to establish a legal framework both at the national and international levels to combat corruption. Malaysia supports any efforts by AALCO Member States in this aspect. Malaysia has enacted a specific law to combat corruption, namely the Anti Corruption Act 1997. Other relevant legislations include the Anti-Money Laundering Act 2001, Mutual Assistance in Criminal Matters Act 2002, Dangerous Drugs (Forfeiture of Property) 1988, Ordinance 22 of 1970 and the Penal Code. These laws amongst other things address the issues relating to offences committed by public officials, misuse of power, forfeiture of assets and mutual legal assistance for the purposes of the procurement of evidence for or from another State.

He stressed that the draft text of the convention should emphasize on international cooperation to combat corruption including on mutual legal assistance and extradition. He said that the Anti-Corruption Agency in Malaysia has embarked on informal bilateral arrangements with neighboring countries to forge such cooperation. Malaysia has also entered into a number of bilateral extradition treaties and has recently enacted the Mutual Assistance in Criminal Matters Act. Malaysia recognizes that an effective legal framework was required to combat corruption and was currently involved in developing a multilateral legal arrangement to enhance mutual legal assistance in criminal matters among like-minded ASEAN Member countries to the extent possible within their respective laws. Such cooperation was also considered crucial for the other transnational organized crimes such as trafficking in women and children.

Malaysia considers this initiative as important to allow the legal fraternity of like-minded ASEAN Member countries to fulfill the component of the Work Programme to implement the ASEAN Plan of Action to Combat Transnational Crime adopted in Kuala Lumpur, on 17 May 2002, which called for the development of multilateral or bilateral legal arrangements to facilitate, *inter alia*, apprehension, investigation, prosecution, exchange of witnesses, sharing of evidence, enquiry, seizure and forfeiture of proceeds of crime in order to enhance mutual legal assistance among ASEAN Member countries.

He informed that Malaysia would be hosting a meeting of the Attorneys General of like-minded ASEAN Member Countries from 30 June 2003 to 2 July 2003 in Kota Kinabalu, Sabah, to discuss the possibility of concluding a multilateral Mutual Assistance in Criminal Matters Treaty among like-minded countries and has prepared a draft of the proposed Treaty to be considered at that meeting. Malaysia considers that such an instrument was timely and will greatly enhance cooperation amongst ASEAN countries in its efforts to combat transnational crime, which appears to have taken hold and were rapidly expanding in this region, in particular the menace of terrorism. Malaysia hoped that such an arrangement might also be achieved within the framework of AALCO. He invited the Secretariat of the AALCO to attend the scheduled meeting as an observer to lend support to Malaysia's initiative. He supported the proposal by AALCO Secretariat to convene a special expert meeting of the AALCO Member States after the deliberation of Sixth Session of the Ad Hoc Committee on the Draft UN Convention against Corruption.

10. The **Delegate of Tanzania** stressed that the scourge of corruption especially in this era of globalization required concerted efforts to address it. The basic issues on this topic were spelt out in the draft convention, which set out its purpose as being to eradicate corruption in all its forms, to workout international cooperation in the fight against corruption, ethical conduct, the rule of law, transparency, accountability, good public and private governance.

In his view, seeking an accurate and harmonized definition of corrupt conduct was as an essential step to realization of areas of co-operation. Present day governance requires public life as much as private business of public interest to be conducted in a manner beyond reproach and probity. Public and private corruption requires to be proscribed.

He said that many resources which have been plundered by corrupt conduct, must be realized back. The process of repatriation of such ill-gotten assets required to be effective and should be carried out safeguarding the basic guarantees of human rights. The convention must address adequately issues relating to effective tracing, seizing and repatriation of corruptly acquired assets without compromising the individuals rights and the integrity of the domestic Legal Systems.

He said that the Secretariat should monitor developments which were taking place in various organizations such as the African Union, the Commonwealth and the Financial Action Task Force on Money Laundering. The Secretariat should also examine development which related to different issues on corruption; such as various schemes for extradition, mutual assistance in criminal matters and generally the whole scheme of exchange of prisoners and tracing of ill gotten property. The need was for holistic approach on these and other issues, which were of essence to this subject.

11. The **Delegate of Nigeria** said that his Government was making strenuous efforts for the recovery of some government funds which had been looted and deposited in some European banks abroad. He regretted that his Government was not receiving sufficient

cooperation from these European Banks. That was not good enough for the international cooperation for the fight against international corruption, Nigeria was of the view that the developed countries where such funds were laundered should assist in the return of those funds as these were funds, which the developing countries needed for their developments.

Further, the developed countries should discourage international corruption by asking the banks in their countries to make an official investigation before receiving huge deposits of money from customers from foreign countries.

His country had taken steps through legislations for freezing the accounts and assets of banks and financial institutions found harboring funds from corrupt sources. He informed of the tougher steps against corruption taken by the present government of Nigeria, the slogan now was that "it is no longer business as usual." Top government officials found in corrupt practices were taken to the Independent Corrupt practices Tribunal for proper trial. That was a Commission set up for the trials of persons found of corrupt practices. Such steps have made top government officials to be conscious in dealing with government funds. He fully supported the work of AALCO in the elaboration of an International instrument against corruption without reservation.

12. The Meeting was thereafter adjourned.