SUMMARY RECORDS OF THE THIRD GENERAL MEETING HELD ON TUESDAY, 28 JUNE 2005 AT 2:30 PM

H.E. Mr. Amos Wako, President of the Forty-Fourth Session in the Chair.

A. The International Criminal Court: Recent Developments

1. **The President** invited the Deputy Secretary-General Amb. Dr. Ali Reza Deihim to introduce the Secretariat Report on the agenda item "The International Criminal Court: Recent Developments".

2. **Amb. Dr. Ali Reza Deihim, Deputy Secretary-General** at the outset stated that it was a pleasure, as well as a privilege to have amongst us the distinguished Vice-President of the International Criminal Court Her Excellency Ms. Akua Kueneyhia. He believed that her presence in the Session demonstrated the value that the International Criminal Court attached to the AALCO. He took the opportunity to welcome her on behalf of the Organization as well as the Secretariat in the Session.

3. He informed that AALCO had been following the developments relating to the establishment of the International Criminal Court since its Thirty-Fifth Session, held in Manila in 1996. From 1996, till the adoption of the Rome Statute of International Criminal Court, on 17 July 1998, the Organization had closely followed the developments in the Preparatory Committee for the elaboration of the Rome Statute. Subsequently, it followed the developments in the Preparatory Commission and after the entry into force of the Statute on 1 July 2002 had been following the developments, in the Assembly of States Parties. In addition, these Reports also drew attention to other relevant developments pertaining to the ICC, such as the extension of UN peacekeeper's immunity by the Security Council or the practice of the United States of America of entering into bilateral agreements with various countries granting immunity to US citizens from prosecution before international courts.

4. Amb. Deihim stated that the year 2005 would be considered as a crucial year in the early history of the International Criminal Court. With the recent ratification of the Rome Statute of the International Criminal Court, by the Government of the Republic of Kenya and Dominican Republic, the Statute, had now 99 State Parties. He hoped that in the year 2005 this would cross the 100 mark.

5. Furthermore, he informed that the first two investigations, on referral by the concerned States Parties in Uganda and in Democratic Republic of Congo were progressing. Moreover, two more countries, namely the Central African Republic and Republic of Côte d'Ivoire had referred the situation in their countries to the International Criminal Court. Very recently, the United Nations Security Council decided to refer the situation in Darfur region of Sudan to the Prosecutor of the International Criminal Court. All in all the ICC had five cases before it and all these cases, pertained to the continent of Africa which had become the crucible for the nascent ICC to establish its credibility and legitimacy.

6.Two other noteworthy developments pertaining to the International Criminal Court in the post Bali Session period had been one, the entry into force of the Agreement on the Privileges and Immunities of the International Criminal Court on 22 July 2004 and the other being the signing of the Relationship Agreement between the International Criminal Court and the United Nations on 4 October 2004 by the President of the Court and the Secretary-General of the United Nations.

7. The present Secretariat Report on the agenda item sought to draw attention to these recent developments. In addition, it highlighted the developments at the Third Session of the Assembly of States Parties, held for the first time at the seat of the Court in The Hague from 6 to 10 September 2004.

8. In conclusion, he stated that the momentum of the work on elaborating the definition on the crime of aggression in the Special Working Group was rather slow. Complexity of the issues, limited time for discussion, political factors etc., were hampering down the progress in this regard. It may be mentioned here that due to the lack of definition of crime of aggression in the Rome Statute, many States had refrained from joining the ICC. The Secretariat Report made an extract from the discussion and conclusions arrived at the Informal Inter-Sessional Meeting of the Special Working Group on the Crime of Aggression that took place in USA from 21-23 June 2004. He also informed that an Inter-sessional Meeting of this Special Working Group recently took place in USA from 13-15 June 2005.

9. He recalled that it was proposed at Bali, during the Forty-Third Session to explore 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 for the AALCO Member States, which could be then placed for the consideration of the Special Working Group. He hoped that the AALCO would be able to hold an Inter-Sessional Meeting on this crucial issue before its next Session.

10. **The President** thanked Amb. Dr. Deihim for his lucid introductory remarks and invited the Vice President of the International Criminal Court Her Excellency Judge Akua Kuenyehia to make her presentation entitled "The International Criminal Court: independence and interdependence".

11. The **Vice-President of the International Criminal Court Her Excellency Judge Akua Kuenyehia** thanked the Asian-African Legal Consultative Organization for the opportunity to make her presentation entitled "The International Criminal Court: independence and interdependence".

12. At the outset she said that the Court had a strong relationship with both continents. Both African and Asian States played an important role in the Rome Conference, which drafted the Statute. Africa was the most represented continent in the Assembly of States Parties. The current President of the Assembly of States Parties (ASP) was from Jordan while the Director of the ASP Secretariat was South African. Three of the Court's 18 Judges were elected from the Asian Group of States and three from the African Group of States. The number of Court staff from Africa and Asia also continued to increase.

13. However, she took the opportunity to make an appeal to Asian and African States for assistance in helping the Court identify and recruit even more qualified staff especially women in the senior professional categories. Particular support was also needed in relation to staff from Asia. The Court knew that such candidates were available but it required the support of AALCO Member States in identifying and encouraging them to apply for positions in the Court

14. The ICC, while an independent judicial institution, operated within a context of interdependence. In this regard, she spoke about the Court's judicial nature and about its unique position at the crossroads of international relations and international law and focused upon

1. The need for an international criminal court,
2. The features which make the ICC particularly well-suited to fill this role, and
3. The role of States and inter-governmental organizations in ensuring the success of the ICC.

1. Need for an International Criminal Court

15. The ICC could be seen as a response to the atrocities, which occurred during the twentieth century. As the preamble to the ICC Statute stated, during the last century "millions of children, women, and men [were] victims of unimaginable atrocities that deeply shock[ed] the conscience of humanity."

16. The protection of individuals from violations of human rights and humanitarian law required appropriate mechanisms to enforce the law. For decades international humanitarian law lacked sufficient mechanisms to hold individuals directly accountable for the most serious international crimes. Punishment for grave breaches of the Geneva Conventions or for violations of the Genocide Convention or the customary law of war crimes and crimes against humanity had depended primarily on national courts.

17. However, national courts were not always willing or able to act. Widespread or systematic violence all too often interfered with their willingness or ability to pursue justice. The failures of national courts in these contexts protected the perpetrators of atrocities behind a wall of impunity.

18. To tear down this wall of impunity, it was necessary to enforce international justice when national systems were unwilling or unable to act. International courts and tribunals were created on an *ad hoc* basis to compensate for the failings of national courts in the face of the gravest atrocities. *Ad hoc* tribunals were created first at Nuremberg and Tokyo after World War II and more recently in response to events in Rwanda and the Former Yugoslavia. These *ad hoc* tribunals had several limitations:

19. Only a few States participated in their creation. The Nuremberg and Tokyo Tribunals were set up by the victorious Allied powers after World War II. The Security Council created the Rwanda and Yugoslavia Tribunals. The ad hoc tribunals were limited to specific geographic locations. They exercised jurisdiction only over crimes committed within a particular time frame. Their establishment involved extensive costs and delays. Their creation depended on the political will of the international community.

20. As a result, their ability to punish perpetrators of international crimes and to deter future commissions of such crimes has been greatly impeded. A permanent, truly international court was necessary to fully enforce international justice. In 1998, the UN General Assembly convened the Rome Conference to fill this essential need by establishing the ICC.

21. In creating the ICC, States were particularly concerned with guaranteeing the Court's underlying legitimacy. Unlike the ad hoc tribunals, the ICC was created by treaty, enabling all States to participate in its creation. All States were invited to participate in the Rome Conference, which created the Court in 1998. 160 States did so. In creating the Statute, States sought broad agreement, which was largely achieved. 120 States voted to adopt the Statute at Rome. This bottom-up approach was also applied to the Court's subsidiary instruments: The Rules of Procedure and Evidence and the Elements of Crimes. A Preparatory Commission in which all States could participate drafted these documents. Considerable effort was made to achieve universal agreement. The Preparatory Commission took all its decisions by consensus. This includes the adoption of both the Rules of Procedure and Evidence and the Elements of Crimes were adopted by consensus.

22. By building consensus, the Preparatory Commission increased the breadth and depth of the global commitment to the Court. 139 States – 19 more than voted for its adoption in Rome - signed the Statute before the deadline for signature passed at the end of 2000. Today, 99 States were Parties to the Statute. More ratification would come in the future.

2. Features

23. She thereafter proceeded to elaborate upon the features, which made the ICC an effective enforcer of international justice. These include:
The Court's subject matter, temporal and personal jurisdiction; and
The Court's independence and impartiality.

a. Jurisdiction

24. The Court had jurisdiction over individuals who commit the most serious crimes of concern to the international community as a whole. It had jurisdiction over genocide, crimes against humanity, and war crimes. The Statute defined the crimes in significant detail.

25. The definitions of crimes drew upon relevant international treaties including the Genocide Convention and the Geneva Conventions. The definitions also drew upon customary international law, and upon the jurisprudence to the Tribunals for the Former Yugoslavia and Rwanda. The Court would also exercise jurisdiction over the offence of aggression once the States Parties to the Statute agree on a definition and conditions for the exercise of the Court's jurisdiction. The Court's temporal jurisdiction was prospective. The court had jurisdiction over offences committed after the entry into force of its Statue on 1 July 2002. The ICC was a permanent Court. It was immediately available to try perpetrators of serious crimes committed after 1 July 2002.

26. The Court does not have universal jurisdiction. Its jurisdiction was limited to situations where:
A crime was committed on the territory of a State that is a Party to the Court, or
The accused is a national of a State Party.
In addition, the United Nations Security Council, exercising its powers under Chapter VII of the Charter, may refer a situation to the Court independent of the nationality of the accused or the location of the crime.
This eliminates the need for the Council to set up *ad hoc* tribunals with the limitations, which had been stated earlier.

b. Independence and Impartiality

27. The Court had a number of features unique from national courts. This was to be expected because of its international nature. However, the central features of the Court – its independence and impartiality and the fair conduct of proceedings – were universal to any Court committed to the rule of law.

28. In this regard, the Vice-President identified the following key elements:

29. As a first matter, the independence and impartiality of the Court was protected by its judges and officials. The judges and officers of the Court were independent actors. The judges were required to be of high moral character, impartiality, integrity, and competence. Various provisions of the Rome Statute and Rules of Procedure and Evidence protect the independence of the Court, its judges, and the Prosecutor.

30. The guarantees of a fair trial and the rights of the accused had paramount importance before the ICC. The Statute required that the law be interpreted and applied consistently with internationally recognized human rights. In addition, the Statute directly incorporated the fundamental rights of the accused protected under international human rights law.

31. The accused was accorded the following rights, among others:

- The right to be presumed innocent until proven guilty beyond reasonable doubt.
- The right to be informed promptly and in detail of the nature, cause and content of the charge, in a language, which the accused fully understands and speaks.
- The right to counsel and the right to be provided counsel where the interests of justice so require.
- The right not to be compelled to testify or to confess guilt, and
- The right to remain silent.

32. Numerous safeguards in the Statute also ensured that politically motivated prosecutions would not take place. The Pre-Trial Chamber was one example of an important innovation in this regard.

33. Before launching an investigation on his own initiative, the Prosecutor must first

obtain authorization from the Pre-Trial Chamber. This ensures that investigations comply with the strict legal standards set forth in the Statute. These include the obligation upon the Prosecutor to consider whether there was a reasonable basis to believe that a crime within the jurisdiction of the Court had been committed and whether the case was admissible.

34. The Pre-Trial Chamber also holds a hearing to confirm the charges against the accused, determining for itself that substantial grounds and sufficient evidence exist to proceed to trial. If the Pre-Trial Chamber is so satisfied, a Trial Chamber was thereafter responsible for the continued conduct of the proceedings.

35. Before the charges are confirmed, the Pre-Trial Chamber was available to protect the rights and interests of individuals, including suspects, victims, and potential witnesses.

3. Complementarity and Interdependence

36. She then proceeded to the Court's relationship with other actors. The Court was part of a system, working together with States, inter-governmental organizations, and non-governmental organizations towards international justice. The support and efforts of States are central to the success of the Court.

37. Under the principle of complementarity, the primary responsibility to investigate and prosecute crimes lies with States. In the ordinary circumstance of a properly functioning national system, the Court would not exercise jurisdiction. The ICC would defer to genuine national proceedings. The ICC would only act when States are unwilling or unable to investigate or prosecute. Whether a State was unwilling or unable to investigate or prosecute was an issue of law to be decided by the Court in accordance with strict legal standards. The right of States to challenge the admissibility of a case was safeguarded by the Statute.

38. As the ICC would only focus on the gravest crimes, States would need to act to investigate and prosecute lesser offenders. Where the ICC did not investigate or prosecute, it depended extensively on cooperation with States at all stages of proceedings. For example, States could assist the Court by facilitating investigations, arresting suspects, providing evidence, protecting victims and witnesses, enforcing sentences of the convicted, and giving other similar assistance.

39. International organizations were also part of this system. Among international organizations, the Court's relationship with the United Nations was particularly important. A relationship agreement now exists between the ICC and the UN. This agreement reaffirmed the Court's independence and governs cooperation between the two institutions. Regional organizations also were critical to maintaining and increasing support for the Court in particular regions. In this regard, the ICC hoped to enter into a cooperation agreement with AALCO in the near future. Finally, non-governmental organizations played important roles in supporting the Court. NGOs had been critical to ratification efforts by States. They had assisted States in developing legislation implementing the Court's Statute. NGOs continued to remind the international community of the importance of the Court.

4. The Court Today

40. Judge Kuenyehia informed that the Court at present was in the judicial phase of its operations. The prosecutor had received over 1300 communications from individuals and organizations. Many communications were outside the jurisdiction of the court, and the situations had not been further pursued. Four situations had been referred to the Prosecutor, three of which were referred by States Parties regarding situations on their territory.

41. The Presidency had assigned each situation to a Pre-Trial Chamber. The Prosecutor was carrying out three

investigations. Pre-Trial Chamber I has held the first hearings and issued several decisions.

5. Conclusion

42. The foundation for the effective enforcement of international justice had been laid through the establishment of the ICC. The effects of this historic event were already being felt throughout the world. In his report on the *Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,* the UN Secretary-General observed, "the Court is already having an important impact by putting would-be violators on notice that impunity was not assured and serving as a catalyst for enacting national laws against the gravest international crimes.

43. Yet, the Court cannot end impunity for horrific crimes by itself. It was but one part of a larger system of international law and justice. It therefore needed the cooperation and support of States and other international institutions. The more support that the Court had, the more it could aid the cause of international justice.

44. The **Delegate of the People's Republic of China** stated that his Government had long supported the establishment of an impartial, independent, effective and universal international criminal court and attached great importance to its positive role in punishing the gravest international crimes. He stated that his delegation had participated in the Third session of the Assembly of States Parties to the Rome Statute that was held in The Hague, seat of the Court, as an Observer.

45. He stated that his Government had closely followed the work of the ICC. It had completed the first stage of setting-up work, entered into a new phase of formal operation, and was conducting in-depth analysis of certain situations. It had been noticed that the ICC was determined to take a positive approach to the principle of complementarity, including encouraging genuine national proceedings where possible, relying on national and international cooperation. The delegate welcomed the establishment of the *Jurisdiction, Complementarity and Cooperation Division* within the Office of the Prosecutor, and hoped that the ICC would strictly stick to the principle of complementarity, for the fulfillment of its task of bringing those accountable for the most serious international crimes to justice.

46. The delegate stated that the Chinese Government would closely follow the work of the ICC and hoped that the ICC could live up to the expectations of the international community, including both States Parties and non state parties, through its impartial and effective work.

47. The **Delegate of the Republic of Indonesia** conveyed his profound appreciation to the President, Officials and Staff of the ICC for their dedication and strong efforts to make ICC as a functioning institution, which would be able to meet the challenges set by the international community. He stated that as the first ever treaty based international criminal court established it was obvious that this institution shall promote the rule of law and abolish impunity of the gravest international crimes. For that reason Indonesia attached great importance to the fundamental principles to the work of the ICC, namely independence, transparency, impartiality and rule of law.

48. Referring to some recent developments the delegate commented on the principle of complementarity by the court. With regard to the definition of crime of aggression his delegation reiterated its earlier positions. Last but not the least his delegation highlighted the effort of the United States to undermine the Court by concluding "Non Surrender Agreement".

49. The concept of complementarity constituted a key principle for work of the Court and had become one of the most important principles of the emerging international criminal law. He stated that it was vital in order to understand the role and the effectiveness of the Court but its actual character would be further clarified through its

application. The said principle defined the relationship between the ICC and the National Courts and determined who should have jurisdiction in a particular case. Under this principle, the ICC was complementary to national criminal jurisdiction over international crimes. In the light of this his delegation commented on the application of the principle in the situation in Congo, Uganda and Sudan. The concern about the occurrence of grave international crimes in those countries was the main reason why international community encouraged those countries to bring an end to the conflict and to bring justice to the perpetrators of such heinous acts.

50. Touching upon the issue of the definition of the crime of aggression he underscored the importance of Resolution 3314 (XXIX) on Definition of Aggression. The definition as spelled out by the Resolution would be a sound basis and point of departure for both creating a general definition and for the selection of acts included in that definition. He stressed that the definition should be specific and not give rise to any contentious interpretation as well as making it difficult to classify the elements of the offence. Moreover Indonesia was of the view that the lack of a determination by the Security Council as to the existence of an act of aggression committed by the State concerned shall not impede the exercise of the Court's jurisdiction with respect to referral to it.

51. The delegate made some brief remarks on the Non Surrender Agreement. In his view this effort had undermined the effectiveness and credibility of the Court. The exemption of a certain class of nationals from the jurisdiction of the Court would cause a serious breach in the regime of international criminal responsibility envisioned by the Rome Statute and could also serve as a dangerous precedent to encourage other States to seek similar immunity for their citizens.

52. In conclusion his delegation urged all countries, both that had ratified the Rome Statute and had signed but not yet ratified the Rome Statute, not to sign any kind of Agreements providing immunity from the ICC's jurisdiction as it obviously undermined the purpose of the ICC.

53. The **Leader of Delegation of Malaysia** welcomed the establishment of the ICC, which came into being on 1 July 2002 and noted the positive steps being taken up by the Court towards world peace and order. His delegation noted with interest the recent development of the ICC particularly on the investigations by the Office of the Prosecutor in the Ituri province of the Democratic Republic of Congo under its *in proprio motu* powers and the referral by the Government of Uganda as a positive step towards promoting world peace and order. However, his country would wait for the first case to be tried by the ICC, as this would give a clearer picture on the operations of the ICC and the implementation of the provisions in the Rome Statute. The case law developed from these cases would provide a useful guide to many countries to fully understand the operational aspects of the ICC.

54. There were certain legal and administrative aspects of the Statute, which were of concern to Malaysia, particularly the implementation of the principle of complimentarity.

55. He stated that that the Rome Statute provided for international assistance and legal assistance. States Parties must co-operate fully with the Court especially with regard to the surrender of alleged offenders for prosecution and co-operation to seek items of evidence. In order to comply with these obligations, enabling national legislation would have to be enacted. In this respect, Malaysia would have to amend the Mutual Assistance in Criminal Matters Act 2002 (MACMA) and the Extradition Act 1992 to enable Malaysia to seek and render mutual assistance in criminal matters to the ICC for the purpose of investigation or prosecution and to provide or seek the surrender of perpetrators to the ICC.

56. His country also supported the suggestion put forward by certain delegations for the establishment of an inter-sessional meeting to study the effective implementation of the Rome Statute through national legislative mechanisms and to explore the ways and means through which the AALCO Member States can contribute to the process of elaboration of the crime of aggression, and the conditions under which the ICC can exercise its jurisdiction with regard to this crime. He hoped that such meetings would not only provide a useful forum for AALCO's Member States which were already parties to the Rome Statute to share their experience but would also benefit countries such as Malaysia which was not a Party to the Statute through the exchange of views and experience. Malaysia and other like-minded countries would be able to take advantage of such forums to continue to put forward its views, concerns and suggestions on possible amendments to the Rome Statute particularly in relation to the elaboration on the crime of aggression.

57. Malaysia also welcomed the work being undertaken by the Special Working Group on the Crime of Aggression under the auspices of the Assembly of States Parties of the International Criminal Court. The progress of the Special Working Group on the Crime of Aggression in trying to define this crime was being closely followed by Malaysia and it was of the view that the proposed definition of crime of aggression should be more specific, that was possible by adopting a listing approach as opposed to a general definition. The latter approach would give rise to contentious interpretations that would ultimately be detrimental. His country realized the difficulties in trying to formulate a universally acceptable definition for this international crime. As noted from the definitions created for the purposes of the military tribunals in Germany and Japan, the definitions were crafted to deal with the exigencies of the prevailing circumstances. In this regard, the Special Working Group should be guided by the modern forms and guises in which this crime was perpetrated. Malaysia would continue to participate in the deliberations of the Special Working Group on the Crime of Aggression.

58. With regard to the initiative by the United States of America for States to enter into bilateral agreements with it which would grant immunity for US citizens from ICC jurisdiction (the Article 98 Agreement), Malaysia was of the view that although it may arguably be legally permissible to undertake such arrangements pursuant to Article 98.2 of the Statute, States should not use the Article 98 Agreement to undermine the integrity of the ICC or to weaken the spirit of the Rome Statute itself. In this regard Malaysia was of the view that such Article 98 Agreements should not derogate from the minimum mandatory obligations imposed on States Parties by the Rome Statute.

59. The **Delegate of the Arab Republic of Egypt**[1] referred to the on-going work in the Special Working Group on the Crime of Aggression. He hoped that the Working Group would be able to formulate an acceptable definition and the definition contained in the UN General Assembly Resolution of 1974 would provide an acceptable basis. It was also important to understand the relationship between the ICC and the United Nations, particularly the Security Council. The Court cannot remain isolated from the international political system. Another area of inquiry should be the relationship of the Court with the State Parties. Furthermore, it needs to be pondered whether recourse to the Advisory Jurisdiction of the International Court of Justice could be taken for international criminal law matters. In any amendment of the Rome Statute in future, he hoped that the Review Conference would incorporate within the jurisdiction of the Court serious crimes such as terrorism, drug trafficking and the use of nuclear weapons.

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

60. The **Delegate of Kuwait**[2] informed the meeting that he had attended a meeting in New Jersey in June 2005 on the definition on the crime of aggression and noted that out of 72 countries represented only 20 Member States of Asia and Africa were present. He felt it would have been more useful if those countries had given their views on the definition of the crime of aggression. He informed the meeting that he had with him a document, which he wanted to place before the meeting. Touching upon the principle of complementarity he felt that this principle was of great importance in the functioning of the Court. He stressed that the role of the UNSC was yet to be defined and briefly touched upon the resolution pertaining to the situation in Darfur, Sudan. He supported the delegate of Sudan, that the resolution was uncalled for as the matters in Sudan were being dealt with by the national courts and there was no need for referral to the ICC.

B. An Effective International Legal Instrument Against Corruption

61. The **Secretary-General** requested the President of the Forty-Fourth Session to the release the AALCO Secretariat publication "Combating Corruption: A Legal Analysis".

62. The **President** then called upon the Minister of Justice and Constitutional Affairs of the Republic of Kenya to present his statement.

63. **H. E. Hon. Kiraitu Murungi, E.G.H., M.P., the Minister of Justice and Constitutional Affairs, Republic of Kenya** congratulated AALCO for publishing a book on corruption. He said that the anti-Corruption Strategy of his Government consists of the following five pillars: -

1. The enactment of the necessary legislation to establish a legislative framework on which to anchor the war on corruption.
2. Vigorous enforcement of anti-corruption laws through investigation of offences of corruption and economic crimes as well as recovery of corruptly acquired property.
3. Identification and sealing of corruption loopholes through institution of effective public sector management controls.
4. National public education aimed at stigmatizing corruption and inducting behavioral change, and
5. Implementing macroeconomic and structural reforms to reduce the incidence and demand for corruption by scaling down the role of the public sector and bureaucracy.

64. He said that corruption in Kenya was a complex social, political, economic, moral and cultural problem, which went beyond the boundaries of law, crime and punishment. To uproot the social, political and cultural roots of corruption, required a fundamental change in the attitudes and behavior – a social transformation, to create a new culture of integrity and rejection of corruption. When the NARC Government came to power, it inherited a situation of rampart, endemic, widespread, and deep-rooted corruption. It was one of the greatest development challenges facing this country today. The Government's core strategy for fighting corruption in the past two years had concentrated on creating effective institutions for investigation, prosecution and punishing of corruption, as well as institutions for prevention and public education. In absence of functioning investigatory, prosecutory and judicial institutions, punishment based anti-corruption efforts had been slow and frustrating. Anti-corruption prosecutions had been largely paralyzed by lack of capacity and numerous legal technicalities and procedures. Criminal law had been a frustrating inadequate and inefficient instrument for fighting corruption.

65. He noted that NARC Government came to power on a strong anti-corruption campaign platform. The people expected swift

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

and quick results. With few convictions it had been difficult to convince Kenyans that the Government was serious about fighting corruption. Sections of the international community had also contributed to the negative perception about corruption in this country. While genuine corruption concerns and constructive criticism were appropriate and welcome there appeared to be a racist bias and prejudice in the western media, which sought to perpetrate the image of African leadership as incorrigibly untrustworthy, corrupt and incompetent. For the first time in its history Kenya had a leadership led by President Mwai Kibaki, which was genuine in its commitment to fighting corruption. Our strategy of creating the necessary legal infrastructure, building institutions asset recovery and changing the culture of corruption was the correct one. Narrow legalistic approach of anti corruption prosecutions and convictions, doesn't take into account the institutional, legal and procedural bottlenecks. Experience elsewhere had shown that occasional populist high profile anti-corruption purges and trials did not materially change the level of corruption in Africa. There was need for more fundamental structural anti corruption reform, which destroys the corruption networks on a more sustainable basis. Anti –corruption reform was not simply a matter of laws, institutions and punishments. It was also about changing behavior, systems and rules of the game.

66. He added that Kenya was deeply aware that corruption was no longer a matter of domestic concern. It was a matter of cross-border and international dimensions, with implications for international cooperation, security and development. There was urgent need to intensify global solidarity against corruption. The UN Convention Against Corruption not only made Corruption an international Crime but also contained elaborate mechanisms for international cooperation in the recovery of stolen assets. The Government of Kenya had initiated action at international level to recover billions of shillings looted during the previous regime, and hidden in accounts in Europe and America. It was disappointing that to date; no European country had ratified this important convention. He appealed to AALCO to popularize the UN Convention, together with the AU Convention against Corruption to assist in the regional and global fight against corruption, and especially in asset tracing and recovery.

67. He emphasized that one of the greatest challenges facing Kenya, in which AALCO's international expertise would be appreciated was the area of anti-corruption transitional justice. The magnitude, complexity and pervasiveness of past corruption in Kenya was overwhelming. It was likely to stretch the resources of our new anti-corruption authority to the limits- thereby creating a situation of apathy and hopelessness in this fight. The perennial contradiction in transition anti-corruption strategies was whether the scarce resources should be invested in digging up the rotten past or in creating a better corruption-free future. It was highly unlikely that a Hong Kong type of amnesty – a public forgiveness of corruption offenders without restitution would be acceptable to Kenyans. Kenyans want the guilty to pay.

68. The Parliamentary Anti-Corruption Select Committee (chaired by *Hon Musikari Kombo,* 2000), recommended that after entry into force of the *Anti-corruption and Economic Crimes Act,*

> All perpetrators of Corruption who own up within one year, and who agree to surrender corruptly acquires gains, or to disclose their corrupt practices and their accomplices be treated leniently by KACA provided they pay taxes duties and other statutory levies they may have avoided

69. In conclusion he said that Kenya was considering the pros and cons of this proposal and noted with gratitude that AALCO had prepared a comprehensive documentation of international anti- corruption instruments. He had no doubt that it would provide some answers to these complex problems.

70. **Amb. Dr. Ali Reza Deihim, Deputy Secretary-General** while introducing the document no. AALCO/44/NAIROBI/2005/SD/S 12, prepared by the Secretariat, noted that apart from the brief, a study was also prepared by the AALCO Secretariat Research team I.e., "Combating Corruption: A Legal Analysis" which would be a useful reference book for the Member States in understanding and implementing the anti-corruption instruments. He said that the adoption of the UN Convention against Corruption was indeed a defining movement in the history of international anti-corruption effort. It is the first legally binding anti-corruption instrument with global scope of application. Compared to any other international agreement, this Convention is the most comprehensive and ambitious and becoming the global standards for a strong international corruption regime. Its adoption marked the larger trend towards greater international regulation of corruption in public and private life.

71. The main focus of the Convention was prevention, criminalisation, international cooperation and asset recovery. Its provisions not only criminalized corruption in public sector, but also the private sector. The Convention broke new ground regarding the prevention of corruption by requiring the establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties. It also called for countries to actively promote the involvement of civil society groups to raise public awareness of corruption. With regard to the criminalisation of corruption, the Convention required countries to establish criminal and other offences to cover a wide range of corrupt acts, including not only bribery and the embezzlement of public funds, but also trading in influence, concealment and money laundering, which were related aspects of corruption.

72. He then enumerated the various important provisions of the UN Convention against Corruption and explained briefly some of the shortcomings, when it came to the political corruption and implementation mechanism. He noted that 26 countries had ratified the Convention and only four more ratifications were required to bring the Convention into force. He hoped that the Convention would come into force by the end of 2005. He also hoped that the Asian African countries would be in the forefront in the ratification of the Convention.

73. The **Delegate of Republic of Indonesia** recognized that preventing and combating corruption was sometimes a slow and painstaking process, Indonesia was doing its utmost to prevent and combat the scourge of corruption at all levels. Indonesia viewed that corruption transpired in a systematic and broad manner, which did not only dilute state finances, but also violate the rights of society in general to social and economic well-being. Combating corruption required extraordinary efforts.

74. The most significant efforts initiated by Indonesia to prevent and combat 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 accepts reports and proclaims status of fulfillment promotes anti-corruption national education curriculum and socialization as well as dissemination programmes on combating corruption, promotes anti-corruption campaigns to the public in general, as well as promoting bilateral and multilateral cooperation in the fight against corruption. In the near future, an Anti-Corruption Court shall be established with the authority to examine and judge criminal acts of corruption.

75. Given the fact that no nation was immune to corrupt practices, Indonesian delegation 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. During the negotiation of the Convention, Indonesia witnessed with great dismay some implacable attempts to put conditionality for the return of assets. Therefore, Indonesia urged AALCO Member States to resist any attempts to use political consideration and determination as conditionality and political tools to achieve international cooperation be it technical, legal or economic assistance, including assistance for recovery and return of proceeds of crimes to the country of origin. Since assets derived from acts of corruption belonged to the society of the country of origin, it was only fair and logical that it should be promptly returned to the country of origin.

76. 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, establishment of networking, and anti-corruption campaign. In light of the importance of cooperation in law enforcement, Indonesian delegation urged AALCO Member States to continue cooperation in the development of law enforcement agencies and personnel training; legislation; quality improvement of legal service; and enhancement of criminal justice system.

77. 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 as our common endeavors.

78. In order to generate global endeavor against corrupt practices, the Indonesian delegation purposed the establishment of networking amongst relevant national and regional task forces or offices. He therefore recommended AALCO Member States to initiate the establishment of such networking. He also urged AALCO Member States to disseminate, sign, and ratify the UN Convention against Corruption, to incorporate the Convention and other measures against corruption into 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.

79. The **Delegate of Malaysia** acknowledged that corruption was a heinous crime that carried grave repercussions. Not only does this menace undermine the economic stability and national security of States, it also tarnishes the basic foundation of humanity and subverts social, economic and political development. The political structure of a nation could be destroyed and its society displaced if corruption was left unchecked and permitted to become a way of life.

80. The delegate noted with interest the developments in the ratification and implementation of the UN Convention against Corruption, particularly among AALCO Member States. Although the response of the Member States to become parties to this Convention was encouraging, Malaysia agreed that much needed to be done if this Convention was to achieve universal acceptance. The delegate further emphasized that the act of ratification or accession, achieved nothing without the necessary political will to combat corruption in all its forms and at every level. Neither can the Convention be effectively implemented if the necessary legislative and administrative framework was not put in place by Member States.

81. He stated that assistance from certain international organizations such as the UNODC was greatly appreciated as part of an integrated and multi-disciplinary approach, whilst drawing on the resources and expertise

of all the agencies involved. This would contribute to the promotion of a global response against corruption. The links between corruption and transnational organized crime could not be separated. Hence, the incorporation of anti-corruption provisions in the UN Convention against Transnational Organized Crime served as a reminder on the nature of this crime. States should seek to align national laws in criminalizing corrupt acts committed by organized crime syndicates. This required States Parties to adopt legislative, administrative and other effective measures to promote integrity as well as to prevent, detect and punish corrupt practices. The delegate was optimistic that, if both these Conventions could be effectively implemented as binding legal instruments, the fight against corruption could be more effective.

82. To produce the desired results, domestic laws to specifically criminalize corruption in all its forms must be enacted. Apart from that, a national independent agency should also be established with the primary responsibility of enforcing the laws and implementing the programmes designed to combat corruption at the national level.

83. The Delegate informed that Malaysia implemented its obligation under the UN Convention against Corruption through the Anti-Corruption Act 1997. The Act established Malaysia's Anti-Corruption Agency (ACA) with the aim of combating corruption by way of prevention, investigation and prosecution of offenders. It provides the ACA with the necessary tools and powers to not only prosecute offenders but also to seize, forfeit and confiscate their ill-gotten gains. These powers were also consolidated through the use of the Anti-Money Laundering Act 2001 to deal with the laundering aspects of such proceeds of crime. The ACA was an independent body, which was able to carry out its functions effectively and free from undue influence. The ACA has the necessary capacity to implement measures proposed under the Convention. The ACA had also introduced a National Anti-Corruption Policy since 1996 and this Policy was reviewed from time to time. With the establishment of the legislative framework as stated earlier, Malaysia would be able to fulfill its obligations under the Convention.

84. In this regard, Malaysia had identified the necessary provisions in its domestic laws, which would require amendments and was undertaking the necessary action to table the amendments before its Parliament in the near future. Ratification of the Convention would take place upon the completion of Malaysia's internal processes.

85. The **Delegate of Nigeria** said that it was committed to the fight against corruption in all its ramifications and had taken necessary steps in this direction. Nigeria had signed and ratified the UN Convention against Corruption on the 31st of October 2003 and 22nd of October 2004 respectively. At the regional and sub-regional levels, Nigeria had signed the African Union Convention on Preventing and Combating Corruption in December 2003 and was in the process of ratifying it; and had in 2001 signed the Economic Community of West African States (ECOWAS) Protocol on the Fight Against Corruption. Nigeria had also taken national measures to implement the provisions of these Conventions.

86. Corruption in Nigeria had several forms such as fraudulent trade practices, misappropriation or diversion of public funds, under and over- invoicing, bribery, false declarations, abuse of office by public officials, and advance fee fraud (known in local parlance as 419). Recognizing the debilitating effect of corruption on the Nigerian social and economic development, as well as the need to implement provisions of the various anti-corruption Conventions to which she was a signatory, Nigeria had taken stringent steps in developing new initiatives to combat corruption. Nigeria had launched the National Economic Empowerment Development Strategy (NEEDS), which was a medium term reform, and development agenda with the objective to fight corruption, ensure greater transparency, promote the rule of law

and strengthen the enforcement of civil obligations.

87. The Nigerian Government was tackling institutional corruption through the setting up of anti-corruption Agencies. The Independent Corrupt Practices and other Related Offenses Act of 2000 established the Independent Corrupt Practices Commission. The Mandate of the Commission was the prevention, investigation of corrupt practices as well as prosecution of the offenders in the country.

88. Nigeria enacted the Economic and Financial Crimes Commission Act in 2002 and subsequently established the Economic and Financial Crimes Commission (EFCC) in 2003 to enforce the EFCC Act. Since its establishment, the EFCC had developed a proactive approach to addressing the problem of corruption, money laundering and economic crimes in the country. Its aim was to pursue a policy of zero tolerance for economic and financial crimes including corruption, fraud, money laundering, illegal oil bunkering, contract scams etc.

89. The Nigerian Government had also established the Budget Monitoring and Price Intelligence Unit (BMPIU) (otherwise known as Due Process), with the objective of strengthening its due process and public expenditure accountability systems. The BMPIU was set up within the Presidency to monitor Government procurement of goods and services. The Introduction of "Due Process" in the conduct of government business was part of government efforts in fighting corruption.

90. Many challenges abound in the process of implementing the UN Anti-corruption Convention and other regional and sub-regional Conventions in Nigeria. One of the biggest challenges faced by Nigeria had to do with international cooperation and asset recovery. In their efforts to recover looted funds stashed away in foreign banks, it had discovered the disquieting reluctance of some countries in their commitment to repatriate such funds. The application of the new money laundering law in Nigeria for example had posed quite a lot of challenges for the Agencies involved in its enforcement. This was because of the nature of the crime, which was transnational in most cases. In addition to the technical nature of these crimes, tracking parties involved in the crime, with the funds scattered all over the world had proved to be a daunting task.

91. Prosecuting some of these corruption cases in Nigerian courts had also been very difficult since the prosecutor was always required to prove the criminal element beyond reasonable doubt. In addition, "Politically Exposed Persons" (PEP), were often shielded by the immunity clause in the Nigerian Constitution until they finished their tenure in office. This provision had contributed significantly to the inability of law enforcement agencies to effectively deal with corruption and money laundering cases. In this regard, the cooperation of other countries was required in obtaining and collating evidence and information on fraudulent transactions. This investigation took quite a lot of negotiation and diplomacy at the highest level. In most cases, trials had been delayed and witnesses had disappeared thus making it difficult to conclude such cases.

92. There was therefore a great need to fashion out an effective international legal instrument, which would be effectively employed in fighting corruption, which had become a transnational crime.

93. The **Delegate of People's Republic of China** said that corruption severely jeopardized the harmonious development of human society, and imposed potential and actual threat to world economy, social justice, and sustainable development. Consequently, corruption was viewed as an ulcer in the economic and political life of human society. He said at present, the international community attached increasing importance to the international cooperation in combating the crime of corruption, which was moving more and more beyond national borders. It was for

this consideration that the Chinese Government, together with other AALCO Member States, had been supportive of formulating the *UN Convention Against Corruption*, an important international legal instrument against corruption, in the hope that they could prevent and crack down upon corruption by strengthening international cooperation. The Chinese government participated in the whole process of negotiations in a sincere, cooperative and realistic spirit, thus positively contributing to the formation of the Convention. China signed the Convention on 10 December 2003. China was now studying how to converge the relevant Chinese laws with the Convention, and would launch the ratification process at an appropriate time. Meanwhile, China hoped that other contracting parties, AALCO member States as contracting parties included, could expedite the ratification process to facilitate the early entry into force of the Convention.

94. The Delegate noted that the *UN Convention against Corruption* was the first global legal instrument against corruption, providing universally accepted norms for tackling transnational corruption. The mechanisms of anti-corruption prevention, criminalization and law enforcement, international cooperation, asset recovery and monitoring of implementation established by the Convention would lay the multilateral legal basis for international anti-corruption cooperation. Consideration should be given to the asset recovery mechanism, which provides that the State party shall provide cooperation and assistance in getting back the transferred assets, thus, the affected State would be able to get back its lost property and lessen the economic loss and social impact brought by corruption. Furthermore, more efforts should be taken to help developing countries build their capacities of preventing and fighting corruption. Special attention must be paid to providing technical and financial assistance to developing countries and countries with economies in transition.

95. He said that the Chinese Government, in accordance with the policy of addressing both symptoms and root causes with a coordinated approach and under the principles of democracy, openness, fairness and justice, had taken measures to prevent and combat corruption and had achieved marked results. Besides, anti-corruption campaign in China was conducted by relying on the people, through the assurance of people's right to democratic supervision according to law. Government officials were obliged to practice self-discipline and preserve integrity and honesty in administrating public affairs according to law. At present, the anti-corruption campaign in China featured with synergy among the legislative, judicial and administrative bodies and joint participation by the government, society and individuals.

96. The delegate said that China was ready to work with the rest of the international community, especially with other AALCO member States, to create a sound environment in favor of the economic and social development of China and all the other countries so as to contribute to the advancement of human civilization

97. The **Delegate of Ghana** said that Ghana signed the UN Convention on Corruption in December 2004 and was in the process of ratifying it. Following the appeal made at the 4th Global Conference on fighting Corruption in Brasilia, Brazil, the Delegate had submitted a memorandum to Cabinet for approval. The Memorandum explained the purpose of the UN Convention and the need for Ghana to ratify the Convention. This was the first step in the ratification process. After approval, the Convention would be submitted to Parliament, as required by the Constitution of Ghana to ratify the Convention by at least half of the members of Parliament.

98. Ghana were also taking steps to ratify both the African Union Convention on the Prevention and Combating of Corruption and the UN Convention on Transnational Organized Crime. Government's efforts at ratifying these international instruments was

testament to H.E. President Kufuor's avowed policy of "zero tolerance for corruption", which he declared upon assumption of office and which had seen the Government of Ghana submit itself to assessment under the African Peer Review Mechanism. In spite of the non-ratification of the UN and AU Conventions, he noted that Ghana was at the forefront in the fight against corruption. Ghana's Constitution enjoined the State to take steps to eradicate corrupt practices and the abuse of power. At the Presidents inauguration ceremony in January 2001, he indicated his determination to fight corruption and followed it up with the prosecution of former public officials. The President's own Minister for Youth and Sports was also tried, convicted and sentenced. It was worth noting that there were other high profile cases involving former public officials still pending before the Courts.

99. Apart from this, the Constitution of Ghana had enabled the country to set up a host of anti-corruption mechanisms and institutions to combat corruption. The Commission on Human Rights and Administrative Justice (CHRAJ) was set up as a consequence of the 1992 Constitution to investigate any matter of abuse of power or violation of human rights by a public official. CHRAJ was an autonomous institution and the Commissioner and his deputies have security of tenure, thus, shielding them from political interference. There was also the Serious Fraud Office, which was set up in 1993 to investigate cases of fraud, corruption and embezzlement of public funds, which lead to financial loss being caused to the State.

100. Reflective of his commitment to public accountability, President Kufuor had also established an Office of Public Accountability where the public could report cases of corruption against public officers, especially Ministers, deputy Ministers and other Government appointees. Other legislation in Ghana to assist in the fight against corruption included the Public Procurement Act, 2003 (Act 663), the Financial Administration Act, 2003 (Act 654), the Internal Audit Agency Act, 2003 and the Financial Administration Regulations, 2004 (L. I. 1802). The combined effect of these pieces of legislation was aimed at fighting corruption aggressively. The administration of especially the Public Procurement Act when managed properly could lead to substantial savings for Government, including making public procurement transparent and devoid of corruption which in the long run hurt the country's economy.

101. In the same vein, the Internal Audit Agency Act empowered the Board to audit all public procurement for Ministries, Departments and Agencies of Government. When the law was effectively applied, public officials involved in procurement would know that they could be audited at any time and would therefore exercise extra caution in the way they engage in procurement activities on behalf of Government. In addition, the Government of Ghana was in the process of passing a law two other very important Bills – the Whistleblowers Bill and the Freedom of Information Bill. These measures were in addition to existing structures within the Police Service such as the Economic Crimes Unit, with the power to investigate cases of economic crime against the State such as willfully causing financial loss, the giving and taking of bribes, bribery of public and judicial service officials, etc.

102. With these efforts to combat corruption, it was the hope of the Government of Ghana that crime and corruption would be reduced, if not eradicated and that they would have some measure of transparency in government. However, Ghana believed that it could not fight corruption alone. Trans-border crimes such as advanced fee fraud, computer fraud including fake credit cards and all other frauds associated with e-commerce, money laundering, illicit trade in narcotics and other hard drugs, stealing of vehicles and traveling documents and transporting small arms using boats and canoes require international cooperation. The Delegate expressed Ghana's need to cooperate with other countries to reduce corruption and to trace public funds, which had been stashed in foreign banks by

former public officials to the detriment of the national economy and the good people of Ghana. Thus Ghana supported mechanisms for exchange of information and best practices among AALCO members and also efforts to repatriate proceeds of corruption.

103. It was the opinion of Ghana that apart from sharing information, the States should not provide safe havens for criminals. States should not reward corruption. States should be ready to confiscate properties acquired through money laundering and be prepared to pursue criminals and their ill-gotten wealth. This way, when the criminals know that there was no hiding place for them, they would advise themselves to give up these nefarious activities.

104. The **Delegate of the Islamic Republic of Iran** noted that **c**orruption was a crime with unique features. It was usually committed without any violence and it generally had no specific individual victim or victims, and finally it had no immediate touchable consequence as violent crimes usually have. That's why corruption crimes, if not controlled, have the potential to spread rapidly, poisoning all levels of society. The spread of corruption in public sector adversely affects the whole aspects of social, economic and political life. It undermined social fabric and ethical values at large, disrupts development programmes, and weakens citizens' trust in the government. Economically the ultimate victims of corruption were the ordinary citizens, though the whole society does suffer from the consequences of corrupt activities.

105. Being aware of the negative effects of corruption on all parts of society, the Islamic Republic of Iran had taken a wide range of measures to prevent and combat diverse forms of corruption. After the issuance of an important eight-point decree on fighting corruption by the Supreme Leader, the anti-corruption campaign in Iran accelerated and fighting corruption became a top priority for my Government. To that end, a high-level committee consisting of the President, the Speaker of the Parliament and the head of the Judiciary were established in order to guarantee a coordinated approach against corruption. Moreover the Committee for promotion of integrity and fighting corruption in public sector was established in presidential office. This think-tank body had made considerable contributions to anti-corruption efforts by publicizing the issue and offering recommendations to related authorities on the best ways to cope with corruption.

106. The Delegate noted that Iran planed to launch extensive scientific studies on corrupt practices. It had held seminars and workshops for local public officials discussing the best practices for preventing and fighting corruption and in December 2004 a conference was held by the Committee to commemorate the first anniversary of adoption of the UN Convention against Corruption and the Universal day against corruption. The Committee had spared no effort in studying different aspects of the problem and raising public awareness about that.

107. He noted that there was a very strict legal regime against corruption in Iranian legal system. Almost all manifestations of corruption, including bribery, embezzlement, diversion, fraud, illicit enrichment, and trade in influence were criminalized. In order to prevent corruption, a draft law against money laundering, adopted a year ago by the Parliament, was for the time being under consideration in the Expediency Council. It was noted that laundering of proceeds of crime was already strictly prohibited in accordance with the regulations and guidelines issued by the High Council of Money and Credit and by the Cabinet. Since banking secrecy was lifted after the amendments made in the code of criminal procedure in 1999, there was no legal obstacle in fighting money laundering.

108. The Islamic Republic of Iran was a signatory to the UN Convention against corruption. The legal procedure for its final ratification by the Parliament had already started and expects that it will be ratified soon. He believed that the Convention provides a

unique legal framework for multilateral cooperation against corruption, including through mutual legal assistance for confiscation and the return of illegally acquired properties. Since asset recovery and restitution of proceeds of crime to their legitimate owners was a fundamental principle of the Convention, necessary measures shall be taken to make it possible. He thanked the UNODC for taking a leading role in this regard by launching, the Asset Recovery Initiative in December 2004 to assist developing countries in building necessary capacities. The implementation of the convention also needs extensive legal and technical expertise and knowledge. The United Nations Office on Drugs and Crime and Member States should work on appropriate ways and means to provide developing countries and countries with economies in transition with the necessary technical assistance. At the same time all States, especially the State of destination, should be encouraged to strengthen the monitoring mechanisms on their financial and monetary institutions in order to prevent laundering of proceeds of crimes.

109. He said that fighting corruption was the responsibility of all states, developed or developing, but it was expected that the developed countries, generally the destination of much of illegally acquired assets, adopt strict measure against illegal transactions, on the one hand, and facilitate their recovery and return to the countries of origin. The adoption of UN Convention against corruption constitutes an important step forward in controlling the menace. It was an indicative of an international consensus that corruption was no more a domestic crime and that it was a crime with transnational dimensions, which can endanger the peace and security of the international community. Therefore all States shall work together to prevent and combat it in a comprehensive manner.

110. The **Delegate of Nepal** noted that corruption had emerged as a serious threat not only to democracy and good governance but also to the rule of law. When public authority was abused for private undue benefits, social stability, social order and rule of law were obviously jeopardized. Corruption also involved transfer of public funds and assets from public to private, from state to individual and sometimes abroad. Thus, corruption has also fatal effects on economic growth of a nation.

111. Given that corruption was a crime, with grave national and international ramifications, and with complex and diverse causes and consequences, it was obvious that only national legislations and mechanisms could not cope with the crux of this crime. Without collective effort and collaborative mechanism at the sub-regional, regional and global levels, it would, therefore, be quite impossible to root it out completely from the public life. In view of this fact, Nepal had always been urging for a comprehensive and multi-disciplinary approach. Nepal believed that the UN Convention against Corruption could serve as an effective instrument for the world community to undergo such approach to curb the fabrics of corruption.

112. Nepal was one the 22 AALCO member State signatories to this UN Convention. It was rigorously working out to establish necessary legal, administrative and institutional frameworks and measures required to ratify and effectively implement the Convention at the domestic level. A high level committee had been formed at the Ministry of Law, Justice and Parliamentary Affairs, to work out and suggest administrative, legislative and judicial measures required to domesticate the Convention. Most importantly, protection of witness and whistle blower related legislation were in the process of being drafted. A comprehensive anti-corruption strategy was also under preparation to address all the aspects inherent in the crime of corruption. Preventive, curative and reformative measures would be envisaged in the strategy. In addition, His Majesty's Government of Nepal had also designated the Ministry of Law, Justice and Parliamentary Affairs as the focal point to deal with all legal aspects inherent in

this field. Nepal's efforts were primarily focused on national anti-corruption policies and mechanisms, strengthening judicial integrity and capacity, promoting integrity in public and private sectors, denying the proceeds of corruption and facilitating the recovery of illicit assets and promoting international cooperation in prevention, criminalization, investigation, detention and penalization of the crime of corruption.

113. The Delegate said that Nepal was in the process of exhausting its constitutional and legal requirements to ratify the Convention. It had already enacted some enabling legislations with a view to combating corruption more efficiently and effectively. For instance, the Prevention of Corruption Act, 2002 and the Commission for the Investigation of Abuse of Authority Act, 1991 have been serving as strong legislative backups for fighting corruption. Most remarkably, provisions relating to the onus of proof lying with the accused, confiscation of misappropriate assets and plea bargaining have also been envisaged to prevent corruption.

114. Given the complexities of the issues, a developing country like Nepal was obviously compelled to face serious financial and human resource constraints. In this regard, it would be helpful, to a large extent, if the AALCO formulates a model legislation required to implement the UN Convention and communicate such legislation to the member States for comments and necessary consideration. In addition, a group of experts could be established to render legal advice and technical assistance to the members facing difficulty with domesticating the Convention. Finally, he requested that the AALCO should keep on deliberating this item in its successive sessions, as well.

115. The **Delegate of Oman**[3] said that his Government paid great attention to fight against corruption, as it has grave impact on the social, economic and legal system of a country. He said that the Oman had enacted a law to fight corruption in 1974 itself, which criminalizes number of acts of corruption including, illicit enrichment, trading in influence, illegal transactions in commercial projects etc. Oman also suggested a need for one system of appointment of public officials, which is transparent and accountable. He also suggested that there was need to make accountable financial institutions and provide for internal and external audit. The delegate noted that even though Oman had not yet signed the UN Convention against Corruption, it already had the necessary legal framework to check corruption and would exert more efforts to fight the menace in future.

116**.** The **Delegate of State of Kuwait** in his brief remark pointed out that the UN Convention against Corruption is very important and its provisions should be implemented at the national level which the State of Kuwait had accomplished by passing a law to try officials and Ministers for bribery and corruption even after the Minister was out of power and office. He finally said that all forms of corruption should be criminalized and effective law should be enacted to deal with this problem.[4]

117. The **Delegate of United Republic of Tanzania**[5] submitted a written statement in which it stated that it had signed the UN Convention against Corruption at the Merida Conference. The law relating to corruption in Tanzania has been reviewed and it had a draft, which would very soon be tabled before the National Assembly for deliberation. Tanzania recognized and appreciated the benefit that it gained from the UNODC Global Programme in terms of provision of technical assistance in strengthening legal and institutional Anti-corruption framework and strengthening judicial integrity.

[3] Unofficial translation from the interpreter's version.

[4] Statement delivered in Arabic. The Secretariat acknowledges with gratitude the official translation provided by the delegation of State of Kuwait.

[5] Statement Presented to the session.

118. In order to assist each other in corruption cases Tanzanian viewed that state parties should be encouraged to make corruption an extraditable offence. Parties should therefore be encouraged to enter into bilateral agreements on extradition and mutual legal assistance without which it may be difficult to offer cooperation to each other.

119. The **Observer from Holy See** stated that this conference offered an opportunity for the members of AALCO to commit them to the advancement of "an effective international legal instrument against corruption," and such a legal instrument would be a major step forward against a phenomenon that had devastating effects on efforts to create societies under the rule of law.

120. Corruption, he said, occurred throughout the world, in both developed and developing countries, but it was especially harmful to the weakest members of the societies, the poor and marginalized. Corruption, however, impacts, in a harsh and disproportional manner, the poor in developing countries. It tends to make them still poorer, denying them their rightful share of economic recourses or life-saving aid. "When corruption creeps into the administration of justice, it was again the poor who pay the heaviest price". Corruption was undermining the social and political development of so many peoples.

121. Corruption was an evil and assails the basic values of our societies. Basically, it was a question of morality and ethics. It was a violation of trust within an organization. Whether in governments or in private business firms, corruption occurs when a person has been entrusted with a responsibility to act on behalf of the organization. With corruption, that individual acts against the organization's interest in order to receive some personal benefit, whether in the form of an immediate bribe or in the form of advantages expected later in return for favors done for others now. The recipient of the benefit makes a corrupt decision and has betrayed the trust of the organization.

122. Corruption was also an institutional problem and needs to be viewed within a broader governance context. This was true in two ways. The first was that even a principled individual – even the President of a nation – who consistently decides not to engage in corruption was typically unable to alter the broader system in which corruption was rampant. Secondly, a virtuous person was often unable to sustain this commitment within an institutional framework where corruption has come to be expected. The role of participatory voice mechanisms afforded to the citizenry in curbing corruption was of particular importance in this context.

123. The problem was so pervasive that it was accurate to speak of a "culture of corruption" in many settings. This means that not only does corruption occur but also both the perpetrators and the victims of corruption have come to expect such behaviors as ordinary and even acceptable in both economic and political life.

124. As a result any successful effort to reduce corruption will need to address both the moral and institutional dimensions of the problem. Explicit attention to the moral dimension of problems has traditionally fallen to religious communities and other organizations within civil society. Fundamental change in institutional patterns must be approached by the institutions of government and the private sector and it was in this arena that the members of AALCO are called upon to take strong action.

125. The principle of subsidiary calls for high-level organizations to respect the autonomy of lower level organizations when problems can be properly addressed at that lower level. However, corruption was such a pervasive problem that even the principle of subsidiarity calls for higher and broader organizations to address it. No local or regional or even national government alone can adequately address the problems of corruption. The network of interaction, the processes for money laundering to hide the

profits of corruption, and the cooperation necessary to prosecute the corrupt require international cooperation.

126. The most promising international effort to date in this direction was the United Nations Convention Against Corruption adopted in October 2003. While having great potential for reducing corruption, it does not provide a process to ensure effective implementation. The need for a follow-up monitoring process cannot be overstated. Monitoring was essential to ensure that diplomatic initiatives are converted into effective government action.

127. Member States are encouraged to cooperate with the Convention Against Bribery of Foreign Public Officials in International Business Transactions, an agreement formally ratified in 1999 by the member nations of the Organization for Economic Cooperation and Development (OECD).

128. The Delegation of the Holy See also recognizes the obligation of Churches and other religious communities to educate their members about the important moral dimensions of corruption and the relation of corruption to the spiritual vitality of individuals, groups and nations.

129. In conclusion, eradicating corruption was not an issue of the left or the right, not of the North or the South, not of government or private sector, not of this political party or that one. Confronting corruption was an issue that must be taken up by everyone. This obligation reaches from the heights of leadership in nations and multi-national firms to the most humble of citizens and workers.

The meeting was thereafter adjourned.