

**SUMMARY RECORD OF THE FIFTH
GENERAL MEETING
HELD ON FRIDAY, 7 APRIL 2006 AT
03.00 PM**

H. E. Mr. Vincent Damian Lyimo, Vice President of the Forty-Fifth Session in the Chair.

A. An Effective International Legal Instrument Against Corruption

1. **Dr. Li Zhenhua, Deputy Secretary-General** while introducing the item recalled the earlier efforts of AALCO on this topic, by citing the publication of AALCO Special Study entitled, "Combating Corruption: A Legal Analysis" which was released during the Forty-Forth Annual Session held at Nairobi. He narrated that this book had brought together all anti-corruptions instruments developed under aegis of both international and regional organizations. He also mentioned the recent effort of AALCO in commissioning another special study on corruption, which provided a bird's eye view of the nature of obligations of State Parties to the UN Convention against Corruption.

2. He opined that the entry into force of the UN Convention, which had got 140 signatories and 50 parties, marked a defining moment in the history of anti-corruption initiatives. Highlighting the salient features of the Convention he stated that, this instrument which rested on 4 pillars namely, **prevention, criminalization, international cooperation and asset recovery** provided for not only the criminalization of corruption in public sector and private sector, but also required the establishment of national anti-corruption bodies. Another remarkable contribution of the Convention he added was, its approach towards asset recovery, which he felt was particularly an important issue for many developing countries where high-level corruption had plundered national wealth.

3. While trying to figure out the shortcomings of the Convention, he noted that the Ad Hoc Committee had deleted many important provisions to accommodate the divergent views of the Member States. Further, the text did not provide for a process to ensure effective implementation. He added that the failure to address this issue remained the most serious shortcoming of the UN Convention. He expressed optimism that the Member States of AALCO would contemplate having a strong implementation mechanism during the first Conference of States Parties to the UNCAC to be held in Jordan from 1st December 2006.

4. While comparing the provisions of UN Convention with the United Nations Convention Against Transnational Organized Crime (TOC), he held that the provisions of the latter Convention, which had got very similar provisions and strategy to deal with corruption and the implementation of these provisions, would also be useful in the implementation of the UN Convention against Corruption.

5. He further stated that the challenge facing the international community now was to ensure that the obligations under the Convention were implemented in letter and spirit by both the developed and developing countries. He concluded by saying that AALCO was looking forward to establish close relation with the United Nations Office for Drugs and Crime (UNODC) to initiate joint training programmes/Seminar for promoting wider ratification and implementation of the Convention among the Asian-African countries.

6. The **Delegate of Thailand** while welcoming the inclusion of the Agenda item maintained that in order to attain the most effective way of combating corruption and to find the root causes of it, all factors regarding legal means, surrounding environment and systems of corruption should be taken into account. He further informed that Thailand had signed the

UNCAC in 2003 and continued to support the enhanced cooperation within the UN framework. He also informed that Thailand had hosted the Eleventh United Nations Conference on Crime Prevention and Criminal Justice in Bangkok, April last year in an effort to register its determined goal to fight corruption.

7. He maintained that the anti-corruption efforts had to be fought at two levels, namely, prevention and suppression. While explaining Thai national legislation on combating corruption, he stated that the Thai Constitution and a number of legislations had been adopted to reduce corruption to the minimum level to suppress the circumvention of possible corruption. He cited the example of Freedom of Information Act, which provided access for the general public to government documents and papers. He also informed that by virtue of the Administrative Court Act, Administrative Courts had been established which guaranteed transparency with regard to the administrative decisions of the government. He also stated that the Act against Collusion in Public Procurement Procedures provided for transparency in government procurement procedures. He further informed that the Anti-Money Laundering Act which represented the most effective legal instrument, covered offences including offences relating to malfeasance in office and malfeasance in judicial office under the Penal code.

8. While portraying the institutional mechanisms established to deal with the issue of corruption, he stated that Thailand had established an Independent National Committee on Counter Corruption to investigate into charges of corruption. He added that these institutions had proved to be very effective within their limited resources.

9. The Delegate informed that Thailand became a signatory to the UN Convention against Transnational Organized Crime in December 2000 and was seeking approval

to sign the supplementary Protocols relating to trafficking in persons, especially women and children and the smuggling of migrants by land, air and sea. He further maintained that Thailand remained committed to the principles enshrined in the Bangkok Declaration and the recommendations adopted by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, by making all efforts, where appropriate, to implement such principles contained therein. He expressed optimism that once amendments to the legislation had been carried out, Thailand would not hesitate to become a party to the Convention.

10. The **Delegate of Malaysia** while reiterating its support for the international instruments on corruption in general and the UN Convention on Corruption and the UN Convention Against Transnational Organized Crime in particular, believed that the global community could achieve substantial progress in its effort to combat corruption provided the multidisciplinary approaches advocated by these Conventions were adopted and implemented collectively.

11. While portraying the domestic legal regime that it had established in the light of the obligations arising out of the UN Convention against Corruption and the UNTOC, the delegation stated that they were primarily implemented through the Anti-Corruption Act 1997 and the Anti-Money Laundering Act 2001 respectively. He further added that Malaysia had established an independent Anti-Corruption agency as well as a Financial Intelligence Unit under the Anti-Corruption Act 1997 and the Anti-Money Laundering Act 2001 respectively. He added that the Anti-Corruption Act 1997 had criminalized most of the offences found in UNCAC, which also included the offences prescribed in Article 8 of UNTOC.

12. He informed that Malaysia was contemplating a comprehensive new law for the protection of witnesses as envisaged in

Article 32 of UNCAC. He further added that the Bill concerned was expected to be tabled at the June 2006 Parliamentary Session. He further informed that the Anti-Corruption Act 1997 was adequate to take care of the execution of asset recovery for proceeds of corruption irrespective of the fact that there was a conviction or not for a corruption offence.

13. He opined that Malaysia was currently engaged with interested countries to conclude a comprehensive network of treaties on extradition and mutual assistance in criminal matters in an effort to combat transnational crime including corruption. He informed that Malaysia had extradition treaties with Thailand, Indonesia, Hong Kong, USA and Australia and had bilateral treaties of mutual assistance in criminal matters with Australia. He also informed that Malaysia had concluded a regional treaty with the like-minded ASEAN Member Countries on mutual legal assistance in criminal matters, which came into force recently.

14. On the question of ratifying the UNCAC, he informed that once the proposed amendments to the Anti-Corruption Act 1997 which sought to implement the mandatory obligations of that instrument were carried out, Malaysia would take the final step in this regard. Explaining the reservations that Malaysia had with regard to the UNCAC, he stated that they were neither meant to undermine the Convention nor to attribute less importance to those provisions. He added that they were more to do with its ability to comply with those provisions at that time and the possible impact that they could have on the economic and other interests of the country and the national sovereignty.

15. While stressing the importance of cooperation in combating corruption, he maintained that Malaysia worked with other countries regionally and internationally through the Anti-Corruption Agency in this regard and by exchange of visits and best

practices, convening of seminars and workshops under the aegis of National Integrity Institute and Malaysian Anti-Corruption Agency.

16. He also maintained that Malaysia looked forward to the convening of the inaugural Conference of Parties of UNCAC to be held in the latter part of 2006. He further expressed hope that the Member States would utilize the facilities of AALCO Secretariat to identify and raise implementation issues arising from UNCAC and if necessary technical assistance. He further suggested that AALCO Secretariat initiate a consolidated study of issues among AALCO Member States to be raised at the forthcoming or subsequent Conferences of parties of both Conventions.

17. While congratulating the AALCO Secretariat on its work "Combating Corruption: A Legal Analysis", he assured the cooperation of Malaysia to prepare the proposed compilation of Anti-Corruption legislations. He also submitted that the amended version of the Anti-Corruption Act 1997 would be duly transmitted to the AALCO Secretariat once the amendment process got completed. He also welcomed the proposal of AALCO Secretariat on the preparation of a Model law to assist the Member States in the implementation of UNCAC.

18. The **Delegate of Pakistan** while appreciating the document prepared by the AALCO Secretariat, maintained that the UN Convention against Corruption remained an important instrument since the effects of corruption and corrupt practices on any society were long term and multi-dimensional. He further added that Pakistan closely followed the developments in this regard and was in the process of ratifying the UNCAC.

19. While highlighting the salient features of the UNCAC, he stated that the Convention applied to the prevention, investigation and prosecution of corruption

and to the freezing, seizure, confiscation and return of the proceeds of offences established under Article 3 of it. He further informed that the offences include, the active and passive bribery of national public official (Article 15), active and passive bribery in private sector (Article 21), bribery by foreign public officials of public international organizations (Article 16), laundering of proceeds of crime (article 23), active and passive trading in influence (Article 18), embezzlement, misappropriation or other diversions of property by public officials (Article 17), embezzlement of property in private sector (Article 22), concealment (Article 24), Abuse of functions (Article 19), illicit enrichment (Article 20), and obstruction of justice (Article 25).

20. While explaining the institutional mechanisms to deal with the issue of corruption, he informed that Pakistan had established a National Accountability Bureau to address the issue of corruption and it has been very effective in countering the menace of corruption from the society. He further informed that at the end of each year the Bureau published its report, which reflected its achievements of the year. He added that it had been very effective particularly with regard to the return of assets from public officials and politicians.

21. **The Delegate of Republic of Indonesia** termed corruption as one of the greatest threats the world had been facing. The delegation of Indonesia maintained that it not only violated national borders and jurisdictions of States, but had also posed political, economic, financial, socio-cultural challenges to the international community, including the Asia and African Region. He further stated that corruption undermined democracy, ethical values, justice and the rule of law, and could destabilize governments, taint public service, and could in the long run deepen poverty, as well as further jeopardize sustainable development in the long term.

22. While stressing the need for cooperation among various countries, he urged all Asian-African countries to intensify regional cooperation to deny a safe haven to officials and individuals guilty of corruption, those who corrupt them and their illicitly-acquired assets, and to prosecute those engaged in bribery, including in international business transactions. He expressed hope that the implementation of the principles of the United Nations Convention against Corruption could have a positive impact in advancing their commitment towards a cleaner and more honest and transparent community in the Asian-African region. He added that Indonesia had already ratified the United Nations Convention against Corruption on 21st March 2006.

23. He identified four fundamental issues contained in the UNCAC which should be implemented by the State Parties to the Convention. Firstly, he maintained that corruption could be prosecuted after the fact, but first and foremost, it required prevention. The entire chapter of the Convention was dedicated to prevention, with measures directed at both the public and private sectors. These included model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. Hence he expressed the view that States must endeavor to ensure that their public services were subject to safeguards that promote efficiency, transparency and recruitment based on merit. Transparency and accountability in matters of public finance should also be promoted, and specific requirements should be established for the prevention of corruption, particularly in the critical areas of the public sector, such as the judiciary and public procurement. For these reasons, the Convention called on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise

public awareness of corruption and what can be done about it.

24. Secondly, he expressed the view that the Convention required countries to establish criminal and other offences to cover a wide range of acts of corruption, if these were not already crimes under domestic law. He stated that the Convention went beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, were also dealt with. Convention offences also dealt with the problematic areas of private-sector corruption. Hence he urged countries to adapt its national legislation by inserting the contemporary criminalization of kinds of corruption offences and practices.

25. Thirdly, he maintained that the Convention urged countries to enhance international legal cooperation in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries were bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries were also required to undertake measures, which would support the tracing, freezing, seizure and confiscation of the proceeds of corruption. Hence he maintained that Indonesia was of the view to call upon Asian-African Countries to create a best practice on Mutual Legal Assistance and Extradition in order to ensure the supremacy of law in combating corruption.

26. Fourthly, he added that the most important aspect of the Convention was that it created a new breakthrough by creating an asset-recovery mechanism. This in his view was an important issue for many developing countries where high-level corruption had

plundered the national wealth, and where resources were badly needed for reconstruction and the rehabilitation of societies under new governments. While explaining the provisions on asset recovery he held that, effective asset-recovery provisions would support the efforts of countries to redress the worst effects of corruption while sending at the same time, a message to corrupt officials that there would be no place to hide their illicit assets. Accordingly, article 51 provided for the return of assets to countries of origin as a fundamental principle of this Convention. Article 43 obliged State Parties to extend the widest possible cooperation to each other in the investigation and prosecution of offences defined in the Convention. With regard to asset recovery in particular, he held that the article provided *inter alia* that "In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties".

27. While portraying the efforts of Indonesia in combating corruption he maintained that it had been undertaking extensive measures to reduce the incidence of corruption as well as to improve and strengthen institutional capacity and the legal infrastructure. The current United Indonesian Cabinet gave high priority to improve governance, including combating corruption. As stipulated by the People's Consultative Assembly's Decree No.XI/1998, combating corruption constituted a national commitment and this was borne out by subsidiary laws and regulations such as Law No.28/1998 on State Executors Clean from Corruption, Collusion and Nepotism (amended by Law No.20/2001). In addition, the Indonesian Government had established the Anti-

Corruption Commission through Enactment of Law No.30/2002.

28. At bilateral and regional levels, Indonesia continued every effort to expand cooperation with neighboring countries in combating corruption and in repatriating illegal assets abroad through extradition agreements and mutual legal assistance in criminal matters. He further added that Indonesia had signed bilateral agreement with Malaysia, the Philippines, Thailand, Australia, the Republic of Korea, and Hong Kong SAR. While terming the UNCAC to be a remarkable achievement, he added that it was only a beginning. He added that it was important to build on the momentum achieved to ensure that all States were willing and able to ratify the Convention at the earliest possible date. He further expressed optimism that UNCAC could make a real difference to the quality of life of millions of people around the world and by removing one of the biggest obstacles to development; it could help us achieve the Millennium Development Goals.

29. The **Delegate of the People's Republic of China** congratulated the Deputy Secretary-General Dr. Li Zhenhua for his lucid introduction of the item. He observed that they believed that the United Nations Convention Against Corruption (UNCAC) was the first global legal instrument against corruption. The entry into force of the Convention in December 2005 demonstrated the common will and firm determination of the international community to fight against corruption. His delegation welcomed the entry into force of the Convention.

30. The UN Convention Against Corruption (UNCAC) was the first global legal instrument against corruption. The entry into force of the Convention last December had demonstrated the common will and firm determination of the international community to fight against corruption. His delegation welcomed the entry into force of the Convention.

31. The Delegate stated that his government attached great importance to the United Nations Convention Against Corruption. As the Standing Committee of the National Congress of China ratified the Convention on October 27, 2005, the Convention had been in effect in China since February 12, 2006. It also applied to Hong Kong SAR and Macao SAR. For the purpose of ensuring a comprehensive and effective implementation of the Convention, the Chinese Government had established an inter-ministerial coordinating mechanism responsible for taking all necessary measures for the implementation of the Convention. The Government, in both public and private sector, to prevent and punish corruptive acts, had taken various measures. In accordance with the policy of addressing both symptoms and root causes with a coordinated approach and in keeping with principles of democracy, openness, fairness and justice, China had taken legislative, judicial and law enforcement measures to prevent and combat corruption and has achieved good results.

32. In respect of international cooperation, his Government had made great efforts in law enforcement cooperation. For instance, it had promoted the conclusion of treaties with all countries concerned on mutual legal assistance in criminal matters and on extradition, so that an international legal framework could be established to punish corruptive acts. Until now, his country had concluded 78 bilateral treaties on mutual legal assistance and extradition with 49 countries, which had already demonstrated their force of deterrence. In addition it had successful cooperation with countries concerned on a case by case basis. It was looking forward to concluding such treaties and initiating such cooperation with all Member States of AALCO.

33. The Delegate further stated that the Convention Against Corruption had set out universally accepted norms for tackling transnational corruption. He was confident that the entry into force of the Convention

would help to promote international cooperation in this field. He believed that effective international cooperation in mutual legal assistance, extradition, recovery and return of the proceeds of corruption is of particular and practical significance for the realization of the purposes of the Convention. His Government was ready to continue its efforts and enter into closer cooperation with other countries and international organizations to prevent and combat corruption and promote the effective function of the mechanisms established by the Convention. His Delegation took the opportunity to appeal to those states, which have not yet done so to ratify the Convention so as to promote the universal cooperation against corruption.

34. The **Delegate of Japan** stated that his country recognized that establishing of counter measures against corruption and the effective international cooperation in this field were important and urgent task for international community, as corruption was no longer domestic or regional problem, but it had transboundary nature and could cause economic or social negative impacts as linkage with global organized crimes hindered international fair commercial activities.

35. As regards the UN Convention Against Corruption, Japan had signed it in December 2003 and relevant Ministries and Agencies had examined the interpretation of the Convention and the necessity of national implementing legislation. After finishing these preparations, the Government had submitted the Convention to the Diet and the relevant national legislation would be delivered soon in the Diet. As regards the UN Convention against Transnational Organized Crimes, Japan had signed it too in December 2000 and the Diet approved the accession to the Convention in May 2003. The national implementing legislation regarding this was being deliberated in the Diet.

36. The **Delegate of Nepal** expressed the view that corruption has emerged as a serious threat to democracy, good governance and rule of law besides shaking the foundations of justice. He also held that corruption also involved transfer of funds and assets from public to private, from state to individual and sometimes abroad. It had fatal effects on economic growth as well.

37. While emphasizing the need for international cooperation, he maintained that due to the diverse causes and consequences of corruption, national legislation and mechanism alone would not be enough to address that heinous crime. Hence he added that in order to root out this problem collective efforts and collaborative mechanisms were required at the sub-regional, regional and global levels. While urging the need to have a comprehensive and multidisciplinary approach, he added that UNCAC could serve as an effective instrument for the world community to undertake such approach to curb the fabrics of corruption.

38. While being a signatory to the UNCAC, he emphasized that Nepal was rigorously working to establish necessary legal, administrative and institutional frameworks and measures to effectively implement the Convention at the national level. He further informed that a high-level committee established at the Ministry of Law, Justice and Parliamentary affairs was working out administrative, legal and judicial measures required to domesticate the Convention. He also stated that Nepal was drafting witness protection laws and whistle blowers related laws.

39. He further informed that in view of the firm commitment of His Majesty's Government of Nepal to curb corruption, a comprehensive anti-corruption strategy incorporating preventive, curative and reformative measures had been undertaken. This 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 the penalization of crime of corruption.

40. While outlining the efforts of Nepal to ratify the Convention, he stated that it had already enacted some enabling laws in this regard which included the Prevention of Corruption Act 2002 and the Commission for the Investigation of Abuse of Authority Act 1991 with a view to combat corruption more effectively. While explaining the complexities of the issue of corruption he suggested that a Model Legislation prepared by the AALCO Secretariat would be highly useful. He further added that the proposed law should clarify the grey areas of the Convention and should be in tune with the UNCAC. He also suggested that a group of experts be established to render legal service and technical assistance to the Member States while domesticating the Convention.

41. The **Delegate of Tanzania** commended the AALCO Secretariat for including the agenda item on “An Effective International Instrument Against Corruption” in the deliberated agenda in the current Session. He observed that fifty years had gone down the memory lane since the AALCO forum was conceived by its founding fathers. They had desired to protect the interest of the people of our region. They worked for the justice for people under colonial occupation and rule as well as the oppressed lot of people who were searching for the enjoyment of the basic rights of people and persons of the region. In the Golden Jubilee Year, yet there was another challenge and that was enormous challenge of weeding out corruption. Scourge of corruption besieged the integrity of some officials in the Governments. The Governments were now faced with the momentous task of weeding out corrupt elements, which comprised the very virtues of the founding fathers, and mothers had stood for and strived for equality, fraternity and concord. In the present times, governments were faced with the enormous

duty of enforcing integrity among their officials. The challenge of having in place a transparent method of expending public funds, the challenges of accountability and money for value in expending public resources, the challenge of ensuring that monies that were collected as taxes from their poor citizen was well-spent and was not siphoned. He stressed that the public service must remain at the disposal of the citizenry, fully committed without fear or favour. Corruption needed to be addressed collectively in the region and the countries in the region must have zero tolerance for corruption. The steps he suggested in this regard must include:

First, countries should endeavor to develop a common definition of corruption. A corrupt person from one country should not be allowed to go scot free. Further, property that was defined as tainted should not be permitted to be clean in other countries.

Second, the endeavor to punish the corrupt must be a collective one. The documents should enjoin collective efforts to punish the corrupt. There were organs and organizations and instruments which united the Member States in their war against crime, defined schemes of extradition, backing of warrants, repatriation of proceeds of crimes, sharing of costs of punishing the guilty and exchange of prisoners and evolving among some of Members of the Organization. These mechanisms were extremely useful in addressing corruption.

42. The Delegate further emphasized upon the need for an effective mechanism of apprehending the corrupt within the two continents and beyond. There ought to be means of tracing ill-gotten wealth that were hidden within the region and developing an effective and economical means of repatriating the assets back to the country of origin.

43. The Delegate called for providing special integrity of the judiciary. The judiciary was the custodian of justice and it

puts them at a higher position, and made it imperative that they secure enough independence and protection to make them dispense justice effectively and efficiently. There was also a need for ensuring probity in national judiciaries. The judicial independence must be supported with transparent rules of probity.

44. As the AALCO was known and well reputed for its ability to achieve painstaking decisions, therefore he wished to utilize the resources available at the Secretariat for working on an effective instrument against corruption.

45. The **Delegate of the Republic of Yemen**¹ stated that corruption does represent a crime against society. He informed that Yemen had signed the UN Convention against Corruption and it was an important international instrument to combat corruption. Yemen, he stated, was in the process of drafting a law, which was under consideration of the Committee. The Committee would submit the report to the legislature, which would enact a law according to the Constitution of Republic of Yemen. He said that the first step in the fight against corruption was to bring transparency in administrative and financial dealings and encourage active participation of civil society. He also noted that data needs to be collected on corrupt practices in order to effectively check the problem. He again reiterated Yemen's commitment to enact a central law for fight against corruption.

46. The **Delegate of Myanmar** observed that corruption was complex social, political and economic phenomenon that impacted on every society. It was the common issue faced by the international community. It had also spread widely to many other parts of the world, including the Asian and African countries as well. A great deal of attention should be given to the issue

of corruption and many steps were required to be taken to combat that menace.

47. The Delegate stated that his country had no exception in combating corruption. Myanmar took active part in the drafting of UN Convention Against Corruption. It was adopted in 2003 and was a prerequisite for the effective implementation of Transnational Organized Crimes including trafficking in persons and money laundering. His country had signed the Convention on 2 December 2003.

48. He further stated that Myanmar was taking active part in the area of economic and financial crimes. The Control of Money Laundering Law and its Rules were promulgated in 2002 and the Mutual Assistance in Criminal Matters Law was also promulgated in 2004.

49. His country had 16 special laws to suppress corruption including the 1948 Corruption Prevention Act. However, this Corruption Prevention Act was required to be in conformity with international norms and standards acceptable by the international community. Since enactment of a domestic law in consistent with the provisions of Convention was required his country was reviewing the 1948 Corruption Prevention Act commencing from 27 May 2005. Such a domestic law to implement the Convention was in the preparatory stage of drawing up.

50. The Delegate stated that States Parties needed to cooperate with one another in every aspect of the fight against corruption. International corruption played a vital role to undertake measure, which would support the tracing, freezing, seizure and confiscation of the proceeds of corruption. International cooperation played a vital role to undertake measure, which would support the tracing, freeing, seizure and confiscation of the proceeds of corruption. Moreover, the ways and means of judicial cooperation should develop to tackle the transnational aspects of corruption. In addition, asset recovery,

¹ Statement delivered in Arabic. Unofficial translation from the Interpreter's version.

which was fundamental principle of the Convention, would not be implemented to return assets obtained through corruption to the countries of origin without the cooperation of the countries concerned. He further stated that corruption was an evil to social development. Fighting corruption was to create the underpinning for sustainable development and rule of law. Myanmar possessed the political will to combat against corruption both domestically and internationally.

51. **The Delegate of the Islamic Republic of Iran²** divided his presentation into three parts. Part I dealt with the monitoring or follow-up mechanism of the UN Convention against Corruption. Part II and III dealt with the possible mechanism for the periodic review of the implementation of the Convention and the nature and characteristics of Member States obligation.

52. *Part-I: Monitoring or Follow-up Mechanism:* He informed that an effective mechanism was of vital important for the implementation of the UN Convention against Corruption as experience with other international anti-corruption instruments showed that without a clear and effective mechanism for implementation such instruments are unlikely to achieve their stated objectives. At the time of negotiations, the draft Article 66 of the Convention dealt with a systematic follow-up programme through Conference of State Parties to the Convention and if necessary by establishing any subsidiary bodies. Three positions were witnessed during the discussions. Most of the European countries were in support of a language beyond the scope of the Convention on Transnational Organized Crime (TOC). They defended the establishment of a monitoring system, according to which the implementation and appliance of the Convention could be evaluated. Austria and Netherlands made a

² Statement circulated and was deemed to be read.

proposal that the Conference of Parties shall agree upon mechanisms for achieving the objectives, a) Facilitating activities by State Parties under articles [Training and technical assistance] and [Other measures: implementation of the Convention through economic development and technical assistance] of this Convention, including by encouraging the mobilization of voluntary contributions; b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for combating it; c) Cooperating with relevant international and regional organizations and non-governmental organizations; d) reviewing periodically the implementation of this Convention; e) Making recommendations to improve this Convention and its implementation.

53. Outlining the position of developing countries he stated that they were divided into two groups. The first group, as proposed by Egypt and Peru, asserted in favour of establishing a Commission or Committee as subsidiary body of the Conference of the State Parties for evaluation, implementation and cooperation, as well as technical assistance in the Convention. Among the Developing countries there was another group, which felt that this convention could be a useful and effective document, but should be formulated as one, which the States could ratify it. Therefore it should not be obligatory beyond the language of TOC. These countries by preferring to have a universal Convention and universal ratification or accession highlighted the fact that for some developing countries it would be hard to join a Convention, which provided a monitoring body as an obstacle to universal cooperation. The Islamic Republic of Iran viewed that the Conference of State Parties should elaborate the required details, and not the Convention at this stage. Furthermore, the implementation mechanism should not impose high costs upon States, nor unfair sanctions.

54. Finally UNCAC's Chapter VII on mechanism for implementation had been diluted more than what was envisaged. The only reference to the phrase of monitoring is in Article 61 (3), which speaks about domestic monitoring of its policies, measures and making assessments. Article 63 provides that a "Conference of State Parties to the Convention" shall be established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation. The Conference shall agree upon activities, procedures and methods of work to achieve the objectives such as cooperating with relevant international and regional organizations and mechanisms and non governmental organizations; and making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work. The Conference of the States Parties shall be convened not later than one year following the entry into force of the Convention. The Conference of State Parties *may* establish a mechanism to assist in the effective implementation of the Convention, *but only if it deems it necessary*. The final structure of the implementing mechanism under the UN Convention was described as *lex simulata* which means "a legislative exercise that produces a statutory instrument apparently operable, but one that neither prescribes, those charged with its administration, nor the putative target audience ever intend to be applied".

55. *The Possible mechanisms for Periodic Review of the Implementation on the Convention*: A multi-year work plan suggested would enable the Conference of the Parties to address the following issues: The information to be provided by States Parties pursuant to article 32, paragraphs 4 and 5, of the Convention. In that connection the Conference may consider the following two options or a combination of the two:

(i) to request the Secretariat to develop a standard questionnaire, which States Parties could use in providing the required information to the Conference;

(ii) to request the Secretariat to draw up a standard set of reporting guidelines that teams of national experts could use in assisting States Parties, if necessary, to prepare their reports;

c. The manner in which the information received from States parties would be processed analysed and presented to the Conference. In that regard the Conference could consider the following options:

(i) The information processed and summarized by the Secretariat, which would report to the Conference.

(ii). The Conference would establish a standing working group composed of States parties, selected on the basis of equitable geographical distribution, which would receive, analyse and carry out a preliminary review of the information provided by States parties and, with the assistance of the Secretariat, submit its conclusions to the Conference;

d. The Conference may wish to explore whether the Secretariat could discharge this mandate with the assistance of a pool of experts, who would be made available by States parties and would form small teams based on substantive expertise and experience;

56. Once the Conference had fully discussed the above issues, it would be in a position to consider the level and manner of financing of the activities' envisaged. The Conference might wish to establish an open-ended informal working group to review the proposals made above and to make recommendations to the Conference.

57. According to this multi year work plan, the Conference of Parties at its Second Session to held in Vienna, 10-21 October 2005, would, inter alia, consider the implementation of the Measures against corruption (Article 9); (Criminalisation of the laundering of proceeds of crime (Article 6); Liability of legal persons (Article 10);

Prosecution, adjudication and sanctions (Article 11), Confiscation and seizure (Article 12); Establishment of criminal record (Article 22); criminalization of obstruction of justice (Article 23).

58. *Part III: Nature and Characteristics of Member States obligation:* The final adopted text of the UN Convention against Corruption has been divided in to eight Chapters and 71 articles. The major Chapters include General Provisions, Preventive Measures, Criminilization and Law Enforcement, International Cooperation and Asset Recovery. An analysis of the important provisions of the Convention is highlighted below. Though the Ad Hoc Committee had also prepared an Interpretative notes for the official records (*travaux preparatoires*) to facilitate the common understanding of some provisions and terms used in this Convention, no action was taken by General Assembly concerning this document.

59. The preamble recognized the seriousness of problems posed by corruption, which endanger the stability and security of societies, undermine the values of democracy and jeopardize social, economic and political development. It also recognizes the link between corruption and in particular organized crime and economic crime, including money-laundering and convinced that the illicit acquisition of personal wealth by senior public officials, their families and their associates can be particularly damaging to democratic institutions, national economies and the rule of law, is determined to prevent, detect and deter in a more effective manner international transfers of assets illicitly acquired by public officials and to recover such assets on behalf of victims of crime and legitimate owners.

60. The chapter on Criminalisation and Law enforcement provided for criminalisation of corrupt acts both in public and private sectors as well as individual responsibilities. He further added that to

adopt legislative and other measures with view of establishing as criminal offence:

Bribery of natural public officials (Article 15); Bribery of foreign public officials and public international organizations (Article 16); Embezzlement (Article 17); Trading in influence (Article 18); Abuse of function (Article 19); Illicit enrichment (Article 20); Bribery in private sector (Article 21); Embezzlement in private sector (Article 22). Money Laundering (Article 23); Obstruction of Justice (Article 25); Liability of legal persons to adopt legislative or other measures (Article 26); Statue of limitations in legislative measures (Article 29).

61. He further added that to improve the capacity of States Parties to the Convention a conference of these parties had been established to promote the review of its implementation. He further added that mechanisms to make recommendations to improve the Convention and its implementations were indispensable. Stressing the importance of the need to have international cooperation he added that Chapter IV of the Convention provided for the promotion and strengthening of international cooperation for the effective law enforcement. Highlighting the provisions of the Convention he stated that Articles 43 to 50 provided for international cooperation in criminal matters in he field of extradition, transfer of sentenced persons, mutual legal assistance, transfer of criminal proceedings, law enforcement, joint investigation and special investigation. In matters of international cooperation whenever dual criminality was considered a requirement, it would be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or not if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both the State Parties.

62. Thereafter, the **Secretary-General** released the Book **“Rights and Obligations under the United Nations Convention**

against Corruption” prepared by the Secretariat. The Secretary-General gave the first copy of the book to the Vice-President of the Forty-fifth Session.

B. Deportation of Palestinians and Other Israeli Practices Among Them the Massive Immigration and Settlement of Jews in All Occupied Territories in Violation of International Law Particularly the Fourth Geneva Convention of 1949

63. **Amb. Dr. Wafik Zaher Kamil, Secretary-General** in his introductory statement highlighted the recent Parliamentary Legislative Council elections held in Palestine; the Advisory Opinion rendered by the International Court of Justice on *Legal Consequences of a Wall in the Occupied Palestinian Territory*; UN General Assembly Resolution calling Israel to comply with ICJ Advisory Opinion; Israeli disengagement from Gaza; and other major developments.

64. He stated that the Israeli disengagement from Gaza and parts of Northern West Bank could be a major milestone in the Middle East peace process and the creation of an independent Palestinian State. He said that this was the first time since the Sinai pullout of 1982 that Israel was vacating territory that it had forcibly occupied. He emphasized that however, Gaza was only a small fraction of the land it occupied in the 1967 war. The Secretary-General highlighted that the Israeli government's plan to remove troops and Jewish settlements from the Gaza Strip would not end Israel's occupation of the territory. Israel would continue to wield overwhelming power over the territory's economy and its access to trade. He pointed out the recent instance of the deterioration in economic and social conditions, resulting from the total closure imposed by the Israeli occupying forces, had resulted in a food and health crisis for 1.5 million Palestinians living in the Gaza Strip. He demanded that the international community must compel

Israel, the occupying Power, to end its policy of collective punishment on the entire civilian Palestinian population and ensure that the occupying Power comply with its obligations under the Fourth Geneva Convention. He stressed that for the Palestinians, Gaza was nothing without Israeli withdrawal from the West Bank and Jerusalem — the proposed capital of the State of Palestine — and without the right of Palestinian refugees to return to their homes in Israel.

65. The Secretary-General pointed out the latest glaring instance of the Israeli violation of its international legal obligations was the raid on the Jericho jail on 14th March 2006 and capturing six Palestinian prisoners who were now being illegally transferred to an undisclosed location in Israel. He said that strikingly the raid on the Jericho jail happened immediately after the western countries withdrew their monitors. He was of the view that Israel, the occupying Power, had carried out this act of violence (aggression) in grave violation of its obligations under international law, including, in particular, international humanitarian law. He observed that as such, Israel, the occupying Power, must be compelled to fulfil its obligations under the provisions of the Convention and immediately release the Palestinian prisoners and return them to Palestinian custody. He also reiterated the urgent need for the international community to take action to address all of the above-mentioned serious violations and grave breaches of international law and international humanitarian law being committed by the occupying Power against the Palestinian people.

66. He pointed out that in a statement made on 6 March 2006, by Acting Prime Minister of Israel, Ehud Olmert declared the Israeli Government's intention to unilaterally "determine its final borders by itself". He said that such declarations constitute not only a blatant violation of United Nations Security Council resolutions, but the

internationally endorsed road map as well. Recent success of the Kadima Party in the Israeli Parliamentary election had once again raised the issue of unilateral withdrawal from many Israeli settlements in the West Bank and unilateral fixation of the country's territorial boundaries with a future Palestinian State. He firmly believed that any withdrawal should be carried out through a process of negotiations with the Palestinian Authority rather than unilaterally. Unilateral withdrawals have dangerous consequences for the Middle East peace process.

67. The Secretary-General observed that the Palestinians for the second time in the recent times had showed their commitment to the democratic process. In a successful and a free and fair manner Palestinians had elected their representatives to the Palestinian Legislative Council. He took the opportunity to appreciate the prudence and sense of responsibility shown by the Palestinian people in successfully holding the elections. He stressed that Palestinian's democratic choice should be respected. He condemned the US, the European Union and the Israeli position to use financial aid as a lever to force *Hamas* to soften its stance on Israel.

68. The Secretary-General recalled that in the previous session, Advisory opinion of the International Court of Justice (ICJ), in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for advisory opinion)* and UN General Assembly resolution was discussed. He said that it was a welcome decision that the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, was declared illegal and contrary to international law. He observed that Israel had rejected the Advisory Opinion of the highest judicial power of the United Nations and the will of the international community and was continuing with the construction of

the wall. He brought to the Delegate's notice one adverse effect of the separation wall in the West Bank region which would lead to monopolization of 75% of the Palestinian water resources by Israel.

69. He said that they had to take note that the Road Map had largely not been implemented. He stated that the Israeli government has failed to take the necessary steps in adherence with its obligations therein. Moreover, Israel had continued with its atrocities on the Palestinian civilians which included, targeted killings, excessive use of force during military incursions, arbitrary and long periods of incommunicado detention, and torture and other forms of inhuman and degrading treatment.

70. To conclude, the Secretary-General stressed that lasting peace in the Middle East requires respect for international law principles and norms and impartial implementation of Security Council Resolutions 194 (1949), 242 (1967), 338 (1973), 425 (1978) and 1397 (2002). The accurate and fair implementation of these Resolutions was essential, because they had rightly designed the workable settlement of the very core of the problem, namely, the creation of peace and the independent Palestinian State, which was now long overdue.

71. The **Delegate of Pakistan** believed that durable peace in the region rested on an honorable and just resolution of the Palestinian issue. He informed that Pakistan supported all recent effort aimed at resolving the Palestinian issue including the UN Resolutions, the Quartet Road Map and the declaration of the Arab League Summit of March 2002. He extended unreserved support to the people of Palestine in their struggle for an independent state with *Al Quds* as its capital. He clarified that Pakistan's initiative towards Israel in September 2005 was meant to encourage Israel to move forward the Middle East

peace process and that it did not imply recognition of Pakistan to Israel.

72. The **Delegate of the Arab Republic of Egypt**³ emphasized that this item was being considered at a time when dangerous developments were taking place in Palestine. There were flagrant violations by Israel of the UN Charter, human rights instruments, and the Road Map of the Quartet. The delegate said that they had reiterated their views in the international arena that Israeli practices were in violation of the Fourth Geneva Convention of 1949 especially the settlement of Jewish population being located in Palestinian territory, human rights violations, closing of Palestine areas, demolition of houses, political assassinations and the construction of the separation wall. The construction of the wall was aimed to change the demography of the Palestinian land. He said that the issue of Palestinians should not be differentiated as political and legal but it should aspire for a solution. He called for denunciation of Israeli practices by the League of Arab States, OIC, and NAM to bring to end the violations against the Palestinian people. The Jordan–Egypt initiative of 2001 and the Beirut initiative 2002 initiated by the current Saudi Arabian king showed that the hand of peace to Israel if they withdrew from the occupied territories did not have any effect. He stressed that the hopes for peace in the Middle East could come true only if peace and rights were given to the Palestinian people in their homeland.

73. The **Delegate of State of Kuwait**⁴ said that the state practice of Israel such as demolition of houses and destruction of property was a clear violation against Palestinian people. The delegate declared that the State of Kuwait denounced the acts of Israel and opined that all other states

³ Statement delivered in Arabic. Unofficial translation from interpreter's version.

⁴ Statement delivered in Arabic. Unofficial translation from interpreter's version.

should also denounce such violence. The delegate declared that they accepted the statements made by Egypt. He requested AALCO to commit to approve in the agenda of AALCO as an expression of its solidarity towards the just cause of Palestinian struggle.

74. The **Delegate of Republic of Indonesia** noted that the Palestine issue had been a fundamental and lasting dispute between Israel and Arab countries. Despite the fact that the Road Map to Peace as a blueprint for peaceful co-existence for Palestine and Israel, frequent armed conflicts between Hamas groups and Israeli forces had forestalled any peace progress. As regards that situation, the Indonesian delegation expressed its deep concern about continuing dangerous deterioration of the situation in the occupied Palestine. He said that Indonesia believed that illegal Israeli actions in the Occupied Territories could neither help the cause of peace, nor can Israel reasonably expect them to be allowed to stand unchallenged. He said that it was time to halt all illegal policies that breeds only resentment and tension, rather than peace and progress.

75. He said that Indonesia was alarmed by Israel's unlawful wall construction in the territory, including in and around East Jerusalem. This he opined was a blatant violation of international law, including international humanitarian and human rights law, and also flagrant disrespect for the relevant advisory opinion of the ICJ as well as the General Assembly Resolution of 20 July 2004. Clearly the construction of the wall violated the economic and social rights of the Palestinian people, consequently having grave effects for their economic and social conditions. He emphasized that the resource problems including, lack of water distribution and water pollution deriving from infrastructure and environmental damages as the result of this policy that had caused waterborne diseases, not to mention the food insecurity, that would certainly

affect the health of Palestinian people which could not be ignored.

76. He informed that Indonesia welcomed the parliamentary elections that had been conducted on 25 January 2006. He said that the peaceful and democratic elections served as an important phase in the development of democratic Palestine and for achieving a comprehensive solution on the Palestine-Israel conflict. He emphasized that as a democratic country, Indonesia respected the decision and aspiration of the Palestinian people to establish their own destiny through free and fair election. He was of the view that the winning party should be given the opportunity to do their best and continue to find peaceful solution on the Palestinian-Israel conflict.

77. He reiterated its support to the Palestinians for their legitimate struggle to establish their own state. Indonesian Delegate was of the view that it should be based upon the vision of two states – Palestine and Israel – living side by side within a secure and internationally recognized border. In this connection, Indonesia underlined the need for directing all efforts to resume the process towards a permanent settlement of the conflict based on the relevant United Nations Security Council Resolutions.

78. In conclusion, he reaffirmed the important role of the UN Security Council with regard to the situation in the Occupied Palestinian Territory and peaceful settlement of the Israeli – Palestinian conflict. The Indonesian delegation reiterated their call on Israel to recognize that there could be no military solution to the situation in Palestine. The path to peace and stability lay through the implementation of United Nations resolutions and working within the ambit of the international community. Indeed, the solution to the core issue of Palestine would accordingly contribute to the comprehensive settlement of all aspects of the problem in the Middle East.

79. The **Delegate of Malaysia**⁵ noted that this item had been on the AALCO agenda since the Twenty-Seventh Session held in 1988 on reference made by the Government of the Islamic Republic of Iran. It had remained on the AALCO agenda through successive resolutions of the Sessions with the Secretariat being tasked to monitor legal developments in the Middle East including Israeli Practices in the Occupied Territories. The delegate commended the Secretariat for its comprehensive reporting on this issue over the years.

80. The Malaysian delegation noted that international discussions of the plight of the Palestinian people took place annually both in the United Nations General Assembly and in specially convened meetings like the July 2000 conference convened in Geneva to consider Israeli breaches and violations of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War and the Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, at Geneva on 15 July 1999. The delegate opined that in spite of all these efforts no progress had been achieved for the Palestinian people to achieve the goals enshrined in General Assembly Resolution 3236 (XXIX) of 22 November 1974 which affirmed their right to self-determination and their inalienable rights in Palestine.

81. There had been innumerable Security Council resolutions affirming that Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, were illegal. There had also been many United Nations resolutions affirming that actions taken by Israel, the occupying Power, to change the status and demographic composition of Occupied East Jerusalem had no legal validity and were

⁵ Statement circulated and deemed to have been read.

null and void and call for the return of all Arab territories occupied by Israel. These United Nations resolutions have also made clear the legal rights and duties of Israel in the Israeli-Palestinian conflict, in particular its duties as an occupying Power.

82. He observed that the United Nations resolutions as well as individual and collective calls from the international community had been ignored with impunity and no action had been taken to enforce them by the Security Council. He highlighted the 15 resolutions adopted at the 57th General Assembly Session as well as the 12 resolutions adopted at the 60th General Assembly Session cited in the Secretariat's Report to assert his point.

83. He highlighted that generations of Palestinians faced, on a daily basis, Israeli acts which violated the Fourth Geneva Convention of 1949, International Humanitarian Law and Human Rights Law through continued acts of violence, use of force against Palestinians resulting in injury, loss of life and destruction, coercive migration and deportation.

84. In this regard, Malaysia noted that the position adopted by Israel that although it was a party to the Geneva Conventions of 12 August 1949, it owed no duty to Palestine because the status of Palestine's accession to those Conventions was questionable "due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine". Israel also claimed that it was not in "occupation" of the Occupied Territory but was in "administration" and therefore did not come under the purview of the Fourth Geneva Convention and the law of belligerent occupation.

85. With reference to General Assembly Resolution 3236(XXIX) of 22 November 1974, the delegate from Malaysia recalled that the international community through the General Assembly had recognized the Palestine Liberation Organization's struggle

for a Palestinian homeland and against Zionism. Further, the United Nations General Assembly itself had recognized that under the existing circumstances, Israel was an "occupying Power" within the meaning of the Geneva Conventions.

86. The delegate noted that the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including Jerusalem and other Arab territories occupied by Israel, had also been reaffirmed in various General Assembly and Security Council Resolutions as well as the resolutions of other bodies of the United Nations.

87. He highlighted that Article 4 of the Fourth Geneva Convention provided protection to the civilian population who find themselves in the hands of a belligerent State or occupying power of which they were the nationals "*at any given moment in any manner whatsoever*" while Article 2 accorded similar protection "*in all cases of partial or total occupation*".

88. He observed that there were many examples of Israeli hegemony. The recent raid on the prison complex in Jericho on 14 March 2006 immediately following the withdrawal of United Kingdom monitors and the kidnapping of Ahmad Saadat, political leader of the Popular Front for the Liberation of Palestine (PFLP) and six other prisoners were examples of Israel's blatant disregard of Palestinian sovereignty and the rules of international law.

89. He stressed that the construction of the infamous "Barrier" (Annexation and Expansion Wall) in furtherance of Israel's policy of closure to control the movement of Palestinians and expand Israel's authority was done in the face of wide-spread global condemnation. The International Court of Justice, through its Advisory Opinion of 9 July 2004 entitled "*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*" found that the Barrier, in its present route and projection,

and with the set of rules and regulations that govern its construction and operation, constituted a severe violation of International Human Rights and Humanitarian Law.

90. He opined that methods of closure throughout the *Intifada* had created severe hardships for the Palestinian people across the West Bank, including East Jerusalem, and the Gaza Strip. The wall had only added to the difficulties faced by the people of the West Bank in health, education, agriculture, social welfare and private sectors.

91. He observed that in spite of all these the Barrier remained standing, with slight modifications ordered by the Israeli Supreme Court and the Palestinians in cities like Qalqilya in the north of the West Bank found themselves hemmed in by Israeli settlements and completely surrounded by a concrete wall. This compounded by strict access/departure controls rendered the inhabitants "prisoners in an Israeli-controlled giant ghetto".

92. He observed that though the withdrawal of 8,000 settlers from Gaza was completed on 22 August 2005 over strong protest from the settlers as the first phase of the disengagement process, Israel continued to plant an even larger number of settlers over the West Bank.

93. He emphasized that much remained to be done for Palestinian refugees and exiles in the diaspora. Many refugees lived in refugee camps dependant on international aid and in deadly war zones such as in Iraq. They were also increasingly marginalized and were not even considered in efforts to solve the conflict. He observed that while the United States and its allies went to great lengths to ensure exiled Iraqis voted in the recent elections, no such effort had ever been made for Palestinian refugees and exiles.

94. The Delegate asserted that the universal recognition of the right of refugees to return to their homes was not only legal

but also moral in character. The United Nations General Assembly Resolution 194 restated and reaffirmed the well-established norm in international law and practice, namely the right of return. This norm was reiterated in several international law instruments such as Article 13 of the Universal Declaration of Human Rights, which states "*everyone has the right to... return to his country*".

95. He observed that the return of refugees was an essential component of generating public confidence in peace. He emphasized that it played an essential part in validating and stabilizing the post conflict political order. The return of refugees was an essential part of the transition to peace, rather than simply a result of it. The end of a conflict is inconceivable without bringing closure to refugee problems. In order to bring the Palestinian Israeli conflict to an end, so as to reach a peace settlement that is indeed "*just and lasting*" the refugee problem had to be definitively resolved.

96. The delegate reiterated its support for the struggle of the Palestinian people and condemned the aggressive activities of the Israelis towards civilians in the occupied territory. The Extraordinary Session of the Organization of the Islamic Conference (OIC) of Foreign Ministers held in Kuala Lumpur in the year 2002 clearly condemned Israel for its escalating military campaign against the Palestinian people, including the daily brutalization and humiliation of its civilians, resulting in mounting casualties, strangulation of the Palestinian economy, systematic and indiscriminate destruction of houses and residential facilities as well as infrastructure, institutions and structures of the Palestinian National Authority.

97. He stated that Malaysia had noted that the disengagement process had purportedly begun, the international principle of the 'inadmissibility of the acquisition of territory by war' affirmed in, among others, UN Security Council Resolution 242 of 22 November 1967 in the

context of Palestine, might be reiterated and upheld. This was especially so in relation to the Palestinian lands annexed through the construction of the Barrier which departed from the Armistice Line of 149 (Green Line) and “which has involved the confiscation and destruction of Palestinian land and resources”.

98. He also recalled UN Security Council Resolution 242 of 22 November 1967 which emphatically affirmed that peace in the Middle East should be based on the “withdrawal of Israeli armed forces from the territory occupied” and “the termination of all claims of all states of belligerency and respect for an acknowledgment of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force”. He noted that although this Resolution together with the principle of returning land in exchange for peace was the basis of the Middle East peace process, nevertheless certain parts of the Palestinian territory remain under Israeli occupation.

99. The delegate reiterated that the use of force against civilians by the Israeli authorities was in violation of the Fourth Geneva Convention. The Fourth Geneva Convention made it illegal to commit or order others to commit “grave breaches” of the Convention. Article 147 defines “grave breaches” as “...*willful killing, torture or inhumane treatment, willfully causing great suffering or serious injury to the health, unlawful deportation or transfer or serious injury to the health, unlawful deportation or transfer or unlawful confinement of a protected person, willfully depriving a protected person of the rights of fair and regular trial, taking and extensive destruction and appropriation of property...*”. He was of the view that the Palestinian issue warranted serious international commitment. He urged Member States of AALCO to enhance their efforts in enforcing the existing UN Resolutions on Palestine and supporting

efforts towards achieving a lasting peace in the Middle East.

100. He was of the view that the reactions of certain States to the Hamas victory in the Palestinian Elections on 25 January 2006 was of serious concern. In addition to the reaction of Israel as documented in paragraph 63 of the AALCO paper, certain States have threatened to withhold (and some had done) financial and other aid to the new Government unless it committed to a certain requested course of action.

101. He observed that such reaction had demonstrated the hypocrisy of certain governments. While they claim to advocate democracy for the Middle East, it was obviously “democracy” on their terms. If voters chose a government deemed by them to be politically unfriendly, they simply refused to accept the results of the elections or attempt to use other means to control the elected government. He emphasized that this was tantamount to interference in the internal affairs of a sovereign State which was prohibited by the principles of the Charter of the United Nations.

102. The delegate of Malaysia stressed that the 14 March 2006 withdrawal of the British monitors from the Palestinian Authority prison at Jericho had already been cited as an example of the international negative reaction to the pending formation of the Hamas Government. This had been denied by the United Kingdom. He pointed out that instead the United Kingdom had explained that the withdrawal was based on its’ concern for the security of its’ monitors. He also highlighted that the monitors were posted following the US/UK-brokered Ramallah Agreement with Israel and the Palestinian Authority in 2002 which ended the Israeli siege of Yasser Arafat’s compound and of the 200 Palestinians who had taken refuge in the Church of Nativity. The monitors’ role was to oversee the Palestinian Authority’s supervision of prisoners, including four convicted by the

Authority itself for the involvement in the murder of an Israeli Minister.

103. He was of the view that although the United Kingdom had stated that it respected the absolute mandate given to Hamas by the Palestinian people, nevertheless the United Kingdom's future relations with the Palestinian Authority would be governed by the principles agreed by the Quartet (the United Nations, United States, European Union and Russia), namely commitment to non-violence, recognition of Israel and acceptance of previous agreements and obligations, including the Road Map. The European Commission, the largest source of funds for the Palestinian Authority, had decided to provide over Euros 120 million (RM539 million) to the caretaker Palestinian Government as emergency aid to meet the needs of the Palestinian population. On the other hand, the United States administration was reported to have asked President Abbas to return USD 50 million that the United States provided to the Palestinian Authority in 2005 for infrastructure improvements.

104. The **Delegate of the Islamic Republic of Iran**⁶ recalled that it was his delegation that submitted this item to the Twenty-Seventh Session of AALCO and it had been taken up at successive sessions. He deplored the continued unspeakable sufferings of the Palestinian people, including the rising number of deaths and injuries among civilians, the deepening humanitarian crisis and the widespread destruction of Palestinian property and infrastructure which were the direct consequences of the unlawful and inhumane policies and practices of the Israeli regime in the Occupied Territories. Over the past six decades Palestinians had been subjected to persecution, punishment and simply because of their wish to exercise their legitimate and inalienable rights, especially their right to live in their homeland.

⁶ Statement Circulated and deemed to have been read.

105. He highlighted the recent violations of international humanitarian and human rights law by the Israeli occupying forces in the occupied territories, particularly annexation of the occupied territories, construction of new settlements in the territories occupied in 1967, implementation of a policy of apartheid by segregating Palestinians of some residential areas from the others, and construction of the separation wall. In this regard the Delegate stated that the failure of the international community to attend the Palestinian issue fairly and effectively had further exacerbated these conditions. Israel had continued to defy the will of the international community, particularly the numerous United Nations resolutions and decisions as well as the Advisory Opinion of the International Court of Justice. As regards the Gaza disengagement, the plan despite Israel's massive propaganda campaign had been implemented with the increase of settlement activities, acceleration of the construction of illegal wall and complete isolation of East Jerusalem from rest of Occupied Palestinian territories.

C. International Terrorism

106. **Dr. Li Zhenhua, Deputy Secretary-General** introduced the item on "International Terrorism" and said that Terrorism had become a worldwide threat to the life and property of the humankind with its various manifestations and was a serious offense of its kind. Therefore the international community attached a special importance to address this issue. He said that the United Nations, various other international organizations and States have been making every effort, over three decades, to prevent and combat this crime. To this end, 13 international conventions, 9 regional conventions as well as UN declarations and resolutions had been concluded or adopted.

107. The Deputy Secretary-General informed that keeping in view the developments at the United Nations, the

item entitled "International Terrorism" was placed on the AALCO's agenda at its Fortieth Session held on 20-24 June 2001, in New Delhi, upon a reference made by the Government of India. It was felt that consideration of this item at AALCO would be useful and relevant in the context of ongoing negotiations in the Ad Hoc Committee of the United Nations on elaboration of the comprehensive convention on International Terrorism based on the draft submitted by India.

108. The Deputy Secretary-General further elaborated that at the 53rd session, the General Assembly decided that the negotiations on the draft of a comprehensive convention on international terrorism based on the draft circulated by India earlier at the 51st Session in 1996, would commence in the Ad Hoc Committee at its meeting in September 2000. In accordance with this mandate discussions were in progress on the draft comprehensive Convention on International Terrorism. During the deliberations consensus had emerged on certain issues notwithstanding differences of opinion on some crucial matters. He explained that the current discussions at the Ad Hoc Committee and the Sixth Committee of the UN General Assembly revolve around the main outstanding issues relating to the scope of application of the convention, contained in draft article 18. These issues relate to the activities of the armed forces during an armed conflict and the activities of the military forces of a State in the exercise of their official duties.

109. The Deputy Secretary-General also added that the Ad Hoc Committee held its tenth session from 27 February to 3 March 2006 at the United Nations Headquarters in New York. Certain innovative approaches had been suggested during the weeklong session, and it was clear that further consultations were necessary to determine their viability. He informed that, the Chairman of the Committee said at the closing of the tenth session that although no consensus had been reached on a draft

comprehensive convention on international terrorism, the strong resolve shown by all delegations to continue the negotiation process was particularly encouraging. The Chairman hoped that while complex issues remain to be solved, he had full faith that all delegations would do their utmost to bridge the existing gaps and reach a comprehensive consensus solution during the coming period. Therefore, it was expected that consensus would emerge in future negotiations on outstanding issues.

110. Dr. Li informed that the Secretariat document described the salient features of the draft comprehensive Convention circulated by India, progress achieved at the Ad Hoc Committee at its ninth session, deliberations in the Sixth Committee of the United Nations General Assembly, developments within Counter Terrorism Committee and the summary of the deliberations at the Forty-Fourth Session of AALCO. Apart from the session document on 'International Terrorism', the Secretariat had also prepared a special study on terrorism for the reference of the Member States. He wished that these documents would facilitate the deliberations on the item, which might focus on the outstanding issues of the draft comprehensive convention.

111. The **Delegate of Thailand** stated that it firmly condemned terrorism in all its forms and manifestations. It was one of the most serious threats to international peace and security for all mankind, which were the core principles as enshrined in the Charter of the United Nations. In order to tackle this international threat, increasing international cooperation was essential to fight against the scourge of international terrorism.

112. The Delegate welcomed the adoption of the Security Council Resolution 1624 (2005) on terrorism and also stated that international cooperation, actions as well as enforcing any efficient measure to combat terrorism by Member States should be conducted in conformity with the principles of

the Charter of the United Nations and with respect to the obligations under international law, in particular international human rights and humanitarian law. The Delegate also added that, Thailand had a firm policy to support all actions against terrorism under the framework of the United Nations Security Council and the General Assembly. To implement obligations under those Resolutions, the Committee on the Consideration of becoming party to International Conventions and Protocols relating to terrorism has been established by the Cabinet to consider the necessary steps of enacting new terrorism-related legislation or amending existing laws. He also informed that as of March 2006, Thailand had already ratified and acceded to 6 of the 13 United Nations Anti-Terrorism Conventions and Protocols and also signed the latest International Convention for the Suppression of Acts of Nuclear Terrorism during the UNGA 60th Session.

113. With regard to the draft comprehensive Convention on International Terrorism, the World Summit Outcome Document 2005 stressed the needs to make every effort in reaching an agreement and concluding a convention during the Sixtieth Session of the United Nations General Assembly. Although some progress has been made, Member States still needed more time to elaborate on outstanding issues. Due to the fact that other sensitive and controversial issues had emerged during the negotiation period. The Delegate said that some Member States, therefore, believed that it was not good environment for negotiating the draft comprehensive Convention. Despite, new proposals emerged from the bilateral contacts that the Chair of the Ad Hoc Committee, established by the resolution 51/210 of 17 December 1996, had with Member States last February, it seemed unlikely that the discussion could be finalized within the time limit.

114. With regard to the legal instruments, he was of the view that both the symptoms and the root causes of terrorism must also be

addressed, including *inter alia* poverty, social deprivation and human rights abuse. He also added that the acts of terrorists should not be ascribed as the acts of their race, nationality or religion as a whole. Thailand was of the view that, in finalizing the convention, they should concentrate more on the outstanding and complex issues. Member States should adopt an open-minded and flexible stance in order to work towards the successful conclusion and maintain the spirit of the convention. Nonetheless, Members should not strive to introduce new elements of terrorist acts, which, in the end, require an implementing legislation for countries to become parties to the convention.

115. The Delegate also reiterated that Thailand fully supported the efforts with a view to adopting and implementing a comprehensive counter-terrorism strategy to promote comprehensive, coordinated and consistent responses at the national, regional and international level to combat terrorism. The delegate stressed the importance of the comprehensive instrument, as well as the strategy and also urged the Member States to do utmost to find a fine balance and bridge our differences to promote the spirit of cooperation in the interest of the international community.

116. The **Delegate of Japan** stressed the importance of strengthening the international legal framework for coping with international terrorism in order to prevent and eliminate terrorism. In this respect, the Delegate pointed out that the Comprehensive Convention on International Terrorism now being negotiated at the UN would contribute to the fight against international terrorism.

117. With regard to terrorism related Conventions, in order to strengthen international legal framework whose principle is “either extradite or prosecute”, Japan already had signed International Convention for the Suppression of Acts of Nuclear Terrorism which was adopted in

September last year and was now preparing for the early conclusion of the Convention. The delegate also informed that Japan organized a seminar on the "Promotion of Accession to the International Counter-Terrorism Conventions and Protocols" in Tokyo and the objective of this seminar was providing technical assistance to those countries, which were lacking in expertise needed for the conclusion of these conventions.

118. The **Delegate of Pakistan** said that international terrorism constituted one of the most pervasive threats the world confronted today. It threatened to destabilize all modern societies. Hence, the Delegate urged and called all States to work together, in a coordinated and cooperative manner, to address this menace comprehensively in all its form and manifestations, which was never as acute as today.

119. He said that Pakistan had been a major target of terrorism and since 9/11, Pakistan had been in the forefront of the international war against terrorism. Besides police and military action, Pakistan was closely cooperating, including through intelligence sharing, to curb terrorist financing. He informed that Pakistan strengthened its domestic legal and administrative framework and signed or ratified 12 out of 13 UN Conventions and Protocols against terrorism. Domestically, Pakistan had banned extremist organizations, detained extremists, outlawed hate material and the misuse of religious institutions, including madrasas.

120. The Delegate said that the Ad hoc Committee established under General Assembly Resolution 51/210 on "Measures to eliminate International Terrorism" on 28 March 2005 had successfully promoted the consensus adoption of the Convention on Nuclear Terrorism. He assured that Pakistan would continue to work with other delegation to achieve a similar consensus on the Comprehensive Convention on International Terrorism.

121. The Delegate said that terrorism had no faith, therefore, we should not become party to efforts to link terrorism with any particular religion. He also added that greater efforts should be made to foster inter-cultural understanding and cooperation. He stressed that the objective of all States, was to make the world safe from terrorist violence, was essential and, indeed, imperative, for international peace and stability for development and prosperity and for the promotion and respect for human rights.

122. The **Delegate of India** said that terrorism was the common enemy of all people, all beliefs, all religion, and of peace, and democracy and it undermined the very foundation of freedom and democracy, endangered the continued existence of open and democratic societies, and constituted a global threat. He informed that India had entered into several bilateral treaties in the areas of combating organized crime, narcotic drug offences, extradition and treaties of mutual assistance in criminal matters.

123. The Delegate informed that India was a party to twelve international Conventions on Terrorism which had been concluded under the aegis of the UN and signing of latest 13th legal instrument namely Convention on the Suppression of Acts of Nuclear Terrorism was under the consideration of the Government. He also said that India tabled a draft Comprehensive Convention on International Terrorism, which was under the active consideration of the UN Ad hoc Committee.

124. He said that the question of definition of an offence was a matter of precise legal language and was already reflected in the text of the draft Comprehensive Convention on International Terrorism. The General Assembly had the central role in this process, if it abdicates its role, the Security Council, as in the past, would continue to deal with this issue in a

partial piecemeal manner, governed by the political imperatives of the moment. He also informed that the latest UN Secretary-General's Report on the Measures to Eliminate International Terrorism indicates that so far, 27 legal instruments had covered the terrorism issue. He was of the view that whole world had been waiting for the Convention, and also urged the States to show the flexibility and demonstrate political will. He said that the issues, which do not fit into the configuration of the present Convention, were, not less important. But he was of the view that they needed to be handled separately in an appropriate format.

125. The **Delegate of Republic of Indonesia** strongly condemned all acts of terrorism, in all its forms and manifestations. The Delegate said that terrorism continued to constitute a threat to all peoples and countries, and to the common interest in ensuring peace, stability, security and economic prosperity. It also violated the most fundamental of all human rights. He reiterated that all States must strengthen international cooperation to crack down terrorism and their networks effectively. Consequently, the campaign against terrorism could only be won through comprehensive and balanced measures in full conformity with the purposes and principles of the Charter of the United Nations and International Human Rights Covenants.

126. The Delegate emphasized that the most important task to deal with terrorism was to lay down a legal foundation that could protect both the interest of the public as well as human rights as the basis for law enforcement to root out terrorism. The strong legal infrastructure that would become the basis of their our national policy as well as actions in fighting terrorism was based on both national processes as well as results of international processes. In this connection, Indonesia had enacted laws and regulations against terrorism as well as

concluded relevant international legal instruments.

127. In responding to the problem of terrorism, at the international stage, the Delegate informed that Indonesia was currently party to UN Conventions dealing with international terrorism and consistently fulfilled its obligation to communicate its written reports to the UN Security Council's Counter-Terrorism Committee (CTC) under Resolution 1373 and UN Security Council's Sanctions Committee under Resolution 1267 on various national measures in the context of implementing relevant UN resolutions on terrorism. Indonesia had also submitted its report on the implementation of UN Security Council Resolution 1540 on the non-proliferation of weapons of mass destruction to non-state actors, including terrorist groups.

128. Domestically, in line with its commitment to combating terrorism, the Delegate said that Indonesian government had also established Desk of Coordination on Counter-Terrorism under the Coordinating Minister for Political and Security Affairs. The Desk mainly dealt with concerted efforts in analyzing, planning and evaluation, as well as serving as a reporting mechanism on terrorist activities. Furthermore, consistent with its efforts to combat the threat of international terrorism, the Government of Indonesia continued to take the necessary and appropriate measures aimed at strengthening the legal infrastructure and enhancing institutional capacities. Indonesia passed law on anti-terrorism, namely Law No. 15/2003. The law had been implemented to prosecute the perpetrators of the Bali bombing. Many asserted that the Bali bombing trial, the first trial of any high profile terrorism case post 9/11, was indeed a fair trial. In this regard, Indonesia highly appreciated the significant cooperation and support from friendly countries, especially in the forensic area that had greatly aided the Indonesian Police to follow the lead and apprehended the perpetrators.

129. He also informed that Indonesia would host the Asian Regional Conference of the International Criminal Police Organization-Interpol on 11 – 13 April 2006 in Jakarta.

130. The **Delegate of the People's Republic of China** said that international terrorism was a serious problem faced by the international community, and constituted a serious threat to international peace and security as a common enemy of the whole world, including Asian-African countries. He also added that the Chinese government had always opposed and condemned international terrorism in all forms and manifestations and at the same time, it was the long-standing position of the Chinese government that terrorism should not be linked to any particular nation or religion, the fight against international terrorism must observe the purposes and principles of the UN Charter and other recognized rules of international law, eschew double standards and deal with both the symptoms and the root causes of terrorism. The Delegate emphasized that China supported a leading role for the United Nations in the fight against terrorism and appreciated the efforts made in this regard by the United Nations.

131. The Delegate informed that out of 13 existing international Conventions Against Terrorism, China had been a State party to 11 and signatory to one. The National People's Congress of China had ratified the International Convention for the Suppression of the Financing of Terrorism in February this year. The Delegate also stressed that China supported efforts to finalize the comprehensive convention on international terrorism at an early date.

132. The Delegate observed that terrorism knew no national boundaries. Asian-African countries suffered various terrorism incidents, and were victims of terrorism. He was of the view that Asian-African countries share common concerns and urged all Asian-African States that

efforts should be made, to strengthen communication and cooperation in the fight against terrorism. He said that China also agreed on the initiative to convene a high-level conference put forward by Egypt and appreciates the efforts made by Egypt. He hoped the meeting would be successfully convened in due time. The Delegate assured that the Chinese government was ready to work with the rest of the international community, including Asian-African countries in a continued effort, to fight against international terrorism efficiently and to maintain international peace and security.

133. The **Delegate of Kuwait**⁷ stated that the State of Kuwait strongly condemned all terrorist acts and was also fully committed to the implementation and incorporation of international and regional agreements and Security Council Resolutions. The State of Kuwait had ratified the United Nations Convention on Combating Nuclear Terrorism in New York, September 2005.

134. The **Delegate of Qatar**⁸ endorsed all the above statements and decided to go with the same direction for combating terrorism. He said that terrorism was a crime, which takes place in sea, air or in earth. He reiterated that Qatar had many bilateral agreements with other States. He also added that this domain had many agreements and the State of Qatar assured that it would extend co-operation for combating the terrorism in the regional and international level.

135. The **Delegate of Nigeria** said that terrorism constituted one of the most serious threats to peace and security to all nations and peoples and it destroyed humanity and makes the world unsafe. He ensured that Nigeria was committed to fight against terrorism in all its ramifications and has taken

⁷ Statement made in Arabic. Unofficial translation from the interpreters' version.

⁸ Statement made in Arabic. Unofficial translation from the interpreters' version.

necessary steps in this direction. He also informed that Nigeria had signed and ratified the most of the principal Conventions and Protocols.

136. The **Delegate of Bahrain**⁹ said that terrorism was a severe problem faced by the international community, and threat to international peace and security. Terrorism violated Human Rights because, it had no religion, no nationality and no geographical identity. He also emphasized that all States should co-operate for combating the terrorism without making any kind of the discrimination. He also suggested inclusion of debate and discussions at the school level, so that the young generation could be guided in the right path. The delegate also urged the States to implement some of the laws strongly at the domestic level for combating money laundering and terrorism.

137. The **Delegate of Yemen**¹⁰ informed that it had acceded to 13 Agreements and Protocols for combating terrorism and had ratified nine of them. He had made reference of the draft definition of terrorism and said that the definition of terrorism should be very practical and it should be competent and also suggested the definition should have the clarity because matters like struggle for independence should not be considered as terrorism.

138. The **Delegate of Malaysia**¹¹ said that since the attacks against the United States of America on September 11, 2001, much had been done at the national, regional and international level to combat international terrorism, and also pointed out the use of armed force against States in the name of combating terrorism. But predominantly the rule of law had prevailed and most alleged terrorists had been dealt

with through the criminal justice system. He also emphasized on the strengthening of the international legal framework on counter-terrorism through the adoption of a new UN Counter-Terrorism Convention as well as amendments to several of the existing Counter-Terrorism Conventions and Protocols.

139. He said that these self-evident facts seemed to emphasize one point. The world community had risen to the challenges of modern day terrorism and the threat of extremists, in all their forms and manifestations. More significantly, States had not allowed the diversity of legal systems, the lack of a universally accepted definition of terrorism or the lack of specific counter-terrorism legislation to distract them from the task of dealing with terrorist acts through the criminal justice system.

140. In this regard, he said that due recognition should be accorded to States that had taken practical courses of action, in accordance with their domestic laws and with due regard for the rule of law, against terrorists and terrorist groups whenever and however necessary. He also added that for Malaysia, this involved the enactment of new legislation to specifically criminalize the acts proscribed by the UN sectoral Counter-Terrorism Conventions and Protocols and to enhance investigative powers and enable the interdiction of funds intended for terrorist purposes. But the absence of specific anti-terrorism legislation had not hindered Malaysia's ability to deal decisively with terrorist groups, in particular extremist movements that advocate violence. In practical terms, Malaysia responded immediately to the September 11, 2001 attacks with the arrest and detention of suspected Jemaah Islamiah members who were associated with Osama bin Laden and Al Qaida. He also said Malaysia continued to work with other countries to investigate suspected terrorist plots and assist in the gathering of relevant evidence for use in the prosecution of suspects in those countries.

⁹ Statement made in Arabic. Unofficial translation from the interpreters' version.

¹⁰ Statement made in Arabic. Unofficial translation from the interpreters' version.

¹¹ Statement circulated and deemed to have been read.

141. He emphasized that Malaysia noted the excellent progress that had been achieved by the United Nations in obtaining adherence to the 13 UN sectoral Counter-Terrorism Conventions. Malaysia added its signature to the International Convention for the Suppression of Acts of Nuclear Terrorism. Malaysia also noted the call of world leaders in the 2005 World Summit Outcome for the conclusion of the Comprehensive Convention on International Terrorism (CCIT) as a priority matter before the end of the 60th General Assembly. The deliberations of the Ad Hoc Committee continued at the 10th session held from 27 February 2006 to 3 March 2006. Unfortunately, no progress had been made on the possible alternative proposals discussed in the Working Group of the Sixth Committee in October 2005. The delegate added that although the Chairman of the Ad Hoc Committee and Working Group was still encouraging delegations to continue consultations on possible approaches to overcome the deadlock over Article 18, it appeared inevitable that the issue would have to be brought up and opened before the General Assembly at the 61st General Assembly in September 2006 unless delegations were prepared to approach the CCIT from a legal perspective and resolve issues on that basis.

142. He said that in the interest of obtaining a legal solution for this legal instrument, Malaysia urged the AALCO Member States to work together to consider the options currently on the table and/or come up with viable alternatives for the consideration of the Ad Hoc Committee through the ongoing informal consultations. On that basis, Members should seek to build on the "meeting of minds" achieved in October 2005 where delegations agreed in principle that actions covered by international humanitarian law (by whomsoever committed) should remain governed by that regime and not the CCIT, bearing in mind also that the Geneva Conventions of 1949 expressly prohibit terrorist acts. If the principle can be agreed,

finding suitable language to clothe it should not be an insurmountable obstacle to legal experts. He stressed that most certainly requiring recourse to the General Assembly, a purely political body, to resolve issues in relation to a legal document does not augur well for the resolve, commitment and creativity of the Sixth Committee and its Ad Hoc Committee.

143. The next issue he highlighted was that the ancillary mandate of the Ad Hoc Committee to address, and keep on its agenda, the question of convening high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

144. Malaysia reiterated its support for Egypt's proposal to convene a special session of the General Assembly to adopt an action plan for cooperation against terrorism. Malaysia had made its preliminary comments on the proposed topics for discussion contained in the Annex to the letter dated 30 September 2005 from the Permanent Representative of Egypt to the United Nations addressed to the Chairman of the Sixth Committee during the 60th Session of the Sixth Committee.

145. He said that Malaysia agreed fully with the point made at the 9th Session of the Ad Hoc Committee that an agreed definition of terrorism would only be possible if it was the outcome of a process where the general membership of the United Nations were fully involved in its formulation. It did not matter whether this was at a General Assembly session or a high-level conference convened under the auspices of the United Nations as mandated by General Assembly Resolution 51/210 or the 2005 World Summit Outcome. But as mentioned earlier, the absence of a universally accepted definition should not prevent States from working together to investigate and prosecute terrorist acts to the full extent of the law.

146. He reiterated that Malaysia's concern in the fight against terrorism was that States should abide by established norms of international law especially the principles respecting State sovereignty, territorial integrity and non-interference in the internal affairs of States and the principle of self-determination while ensuring that perpetrators were not allowed to carry on their activities with impunity. Malaysia also called on States to abstain from unilateral action against other sovereign States. States should adhere to the principled stand that all measures against terrorism should be undertaken with the sanction of the United Nations pursuant to Chapter VII of the UN Charter. Malaysia emphasized its stand that it was not in favour of and would not support any unilateral action by any State that was not in conformity with international norms, rules and regulations.

147. The **Delegate of Union of Myanmar**¹² condemned that all acts of terrorism in all its forms and manifestations and at the same time the delegate rejected any identification of terrorism with a single race, culture or religion. He also emphasized that the fight against terrorism should be conducted in accordance with obligations under international law, whilst respecting sovereignty, territorial integrity and adherence to the principle of non-interference in the internal affairs of other States.

148. The Delegate reiterated that Myanmar was fully committed to enhance cooperative efforts to combat international terrorism at the national, regional, and international levels. He said that as a member of ASEAN, Myanmar was engaged in a number of regional initiatives to fight terrorism. These efforts had contributed to peace and stability in the particular region and Myanmar would be committed to

continue the co-operation for fight against terrorism, together with other States.

149. He appreciated the international community for achieving certain success in its coordinated response to terrorism, such as the 13 universal counter terrorism conventions, however, its fight against terrorism still remained and it was an uphill fight. He recalled the earlier acceptance of an appropriate operational definition of terrorism, the more effective and concerted. The Delegate expressed his full support for the idea to hold a high-level conference under the auspices of the United Nations once the draft comprehensive convention is successfully concluded.

150. The **Delegate of Nepal**¹³ said that in the course of coping the heinous crime of international terrorism, international law could play a crucial role in the context of its objective of securing international peace and security, protecting and promoting human rights. He stated that given the global reach and ramifications of terrorism, individual and national effort alone would not essentially be effective to root out terrorism. Equally effective efforts were needed to be made at all national, regional and international levels. The delegate reiterated that for such a coordinated and complementary mechanism, the AALCO could provide a common forum for its Member States to work out a common agenda to curb terrorism.

151. The delegate also said that his country had also become a victim of terrorism. He reiterated that due to this his country was compelled to divert their limited human and financial resources to curb terrorist activities. He stressed that in line with other members, his country strongly condemned terrorism in all of its forms and manifestations.

¹² Statement circulated and deemed to have been read.

¹³ Statement circulated and deemed to have been read.

152. In an effort to join hands with regional and international communities, the delegate said that Nepal had joined various conventions related with terrorism, which include the Convention for the Suppression of Unlawful Seizure of Aircraft, 1971, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, 1973, International Convention against the Taking of Hostages, 1979 and SAARC Regional Convention on Suppression of Terrorism, 1987. Moreover, Nepal has also signed the International Convention for the Suppression of Terrorist Bombing, 1998. Necessary domestic legal requirements were underway to ratify that Convention. In addition, Nepal was also looking forward to join the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation 1971 and Convention on the Marking of Plastic Weapons for the Purpose of Identification 1991.

153. He also added that Nepal had been vigorously reviewing its criminal legal regime to address various facets of terrorism at the domestic front and making a criminal code with definition of terrorism and allied acts as heinous crime, carrying serious punishment.

He also suggested that it was high time for the AALCO to work out a convention against terrorism, seeking to define the crime of terrorism, addressing various manifestations inclusive of cyber terrorism and boundary management and control measures, and providing for the establishment of a common fund for the rehabilitation of victims of terrorist activities in the Member States.

D. Human Rights in Islam

154. **Amb. Dr. Wafik Zaher Kamil, Secretary-General of AALCO** introduced the Secretariat document No: AALCO/45/HEADQUARTERS SESSION

(NEWDELHI)/2006/SD/S 16 on the topic "Human Rights in Islam". He explained that the report, in continuum of the Forty-Fourth Session, attempted to analyze the Islamic criminal procedural laws from a human rights perspective. The Report was divided into two parts. First part analyzed the international and national criminal procedural laws from a human rights perspective. The second part analyzed the Islamic criminal procedural laws and principles through the prism of human rights.

155. The Secretary-General drew attention to the fact that substantive criminal law was not self-operative. A person accused of an offence was not punished instantly. He explained that the procedural law looked after the process of administering and enforcing the substantive criminal law. The procedural law controlled and regulated the working of the machinery set up for the investigation and trial of offences. He pointed out that the Secretariat Report highlighted the human rights provisions enshrined in the criminal procedural laws of Islam. If the *Shari'ah* allowed the investigator or the judge to place certain restrictions on the accused's rights to maintain the principle of the society's rights, it also placed restrictions on the power of the investigator, which assured guarantees to the accused. He emphasized that presumption of innocence; non-retroactivity of law; and equality and equal protection of laws were the cardinal principles of Islam. Rights of the accused included, right against torture; protection of privacy and honor; principles of fair trial, which included, right to defense; right to engage counsel; right to keep quiet; right to retract confession; and right to compensation for mistakes in adjudication.

156. The Secretary-General observed that the topic attained significance in the present context, as it had been a historical fact that there had been systematic efforts from certain quarters to malign Islam and its teachings. He underlined that defamation of

a particular religion or belief would contribute further to the misinformation campaign and would certainly affect the peaceful co-existence of various religious and ethnic groups. He also emphasized that the identification of Muslim faith with religious extremism, fundamentalism and fanaticism had led to stigmatization of Islam. He said that it was AALCO's endeavor to clear the misunderstandings regarding the religion and to highlight the human rights principles enshrined in Islam. He also recalled that the Secretariat reports of the previous years had focused on Human Rights in Islam from civil law point of view and also the human rights dimensions of the Islamic Criminal Law.

157. The Secretary-General further added that the Forty-Fourth Session of AALCO had agreed to the proposal of the Head of the Delegation of Malaysia, Hon. Tan Sri Abdul Gani Patail, Attorney General of Malaysia to convene an Expert Meeting comprising Member States of AALCO to achieve a concrete study in respect of the issue of human rights in Islam. He informed that, to this end, the Malaysian Delegation had expressed its preparedness to host the meeting of the experts in collaboration with the AALCO Secretariat and the Kingdom of Saudi Arabia, the initiator of the subject matter. He informed the Session that the Government of Malaysia had decided to hold the "Meeting of International Experts on Human Rights in Islam" from 15-19 May 2006 in Kuala Lumpur. He expressed the hope that this Meeting would set to serve as a platform for experts from various fields to examine the Islamic principles of human rights with the main purpose of eliminating misunderstandings about Islam and the Muslims.

158. Before concluding, the Secretary General expressed his hope that the Secretariat Report would help the delegations to deliberate towards judging the Islamic law, in general and Islamic criminal procedural law, in particular, in the right perspective. He underlined that analyzing

the human rights dimensions of Islamic law was important in the current global situation, where Islam and its moral and legal aspects were deliberately sought to be misunderstood.

159. The **Delegate of Islamic Republic of Iran** stated that the principles and rules of international criminal procedure law were mainly those rules, which were preconditions for a valid and just exercise of authority and its limits and scopes of the following judicial process: 1). The initiation of investigation and prosecution; 2). Proceedings of trial, appeal and general principles of international law, according to the Article 38 of the Statute of the ICJ and Art. 21 of the Rome Statute, related to the adjudication, exercise of jurisdiction and admissibility of the case before International Criminal Courts (Tribunals) even composition and administrations of these courts and international cooperation and judicial assistance were pertinent to the procedural rules of International Criminal Law, interconnected with Human Rights; 3). The reasons could be found in the relevance of Human Rights as far as arrest, surrender or extradition to the International Courts (Tribunals) were concerned.

160. He observed that the compliance or at least non-contravention of these judicial acts with Human Rights were explicitly highlighted by Art. 9 of the International Covenant on Civil and Political Rights, Art. 5 of the European Convention on Human Rights, Art. 7 of the American Convention on Human Rights, and Art. 6 of the African Charter on Human and People Rights.

161. The delegate expressed his appreciation to the Secretariat for its excellent Report on Human Rights in Islam. He agreed with its best articulate methodology, namely a comparative Study of International Criminal Procedural law with the Islamic *Shariat* Law. He stated that the best and most recent sets of normative standards and methods from criminal procedural perspective have been set forth

by the Rules of Procedure and Evidence of the International Criminal Court, prepared after two years of discussions within the Preparatory Commission, adopted in the first session of the Assembly of State Parties to the Rome Statute in New York, 3.10.2002. Therefore, the delegate proposed to the Secretariat, under the leadership of its distinguished Secretary-General, to take up these ascertained Principles and Standards for the coming Forty-Sixth Annual Session. The Delegate also highlighted few instances, as far as Human Rights were concerned. They were composition and administration of the Court; solemn undertakings by the judges, staff of office of the prosecutor, the registry, interpreters, and translators; code of professional conduct; retention of information and evidence; qualifications and election of Registrar and Deputy Registrar; responsibilities of Registrar relating to victims and witnesses; right to Counsel for defense; rights of the defense, assignment of legal assistance, etc; qualification of Counsels for defense; disciplinary measures against situations that may affect the independent and impartial functioning of the court, against serious misconduct and serious breach of duty or removal from office, disqualification of judges and prosecutor.

162. Regarding the issue of jurisdiction and admissibility, the Delegate drew the attention to reasonable basis to proceed with an investigation; procedure for authorization by the pre-trial Chamber of the commencement of investigation; provisions relating to various stages of the proceedings; compellability of witness (solemn undertakings in this regard); principles of evidence; self-incrimination by a witness or by family members of the accused persons; inspection of material in possession or control of the prosecutor or defense; disclosure by the defence (alibi); grounds for excluding criminal responsibility; general principles relating to victims; protection of victims and witnesses; reparation to victims and assessment of reparation; measures for the purposes of for forfeiture; place of

proceeding, time limit; The protection of Justice (offences against the administration of Justice); rulings regarding protection of evidence, reactions towards false testimony; protection of witness against acts of corruption, threats and violence; The offences against courts officials (intimidating, impeding or corrupting); and sanctions in cases of these offences:

163. On the issue of the powers and trial chamber he emphasized on the quality of the trial; fair and expeditious trial; the rights of the accused; protection of victims and witnesses; protection of confidential information; protection of the parties to the trial (accused, witness and victim); the principle of Public Hearing; and the principle of the accused's constant presence at trial (the question of trial *in absentia*).

164. The rights of the accused included three main categories of rights, presumption of innocence, right to a public and fair hearing before the impartial judges and minimum guarantees as have been enshrined in ICCPR Art. 14, Universal Declaration on Human Rights Arts. 10 and 11; Rights of accused to be informed of the charges, to have adequate time and facilities for the preparation of the defence; the rights to be tried without undue delay; the right to legal assistance; the right to examine witnesses and to obtain their attendance; the right to have an interpreter and privilege against self-incrimination; the right to be silent; principle of fairness and equality of arms; the defendants should have the same access to documents, to records, evidence as the prosecution; the ones probed (to prove the guilt of the accused) on the prosecution, prohibition of reversal of ones); right of appeal; and the right to compensation (for unlawful arrest (detention), unjust conviction, miscarriage of justice) underlined by Arts.9 and 14 of ICCPR, Art.5 of European Convention on Human Rights and Art.10 of American Convention on Human Rights and Art 85 of Rome Statute and Rules 173-175 of Rules of Procedure and Evidence.

165. The **Delegate of Arab Republic of Egypt**¹⁴ highlighted that Islam guaranteed civil, political, social and economic rights, including equality, freedom of expression and opinion. Islam provided the right to choose religion, as there was no compulsion in Islam. He pointed out that there was full cohesion between the Islamic law and Article 18 of the Universal Declaration of Human Rights. He emphasized that the Islamic principle that if somebody kills a human being without any reason it was like killing the entire humanity. He also quoted some of the Arab thinkers and writers who said that justice was the cornerstone of Islam. He pointed out that Islamic law provided for equality of human beings. He affirmed that Islamic law empowered women in many occasions as women were considered as weaker side of the relation.

166. The **Delegate of State of Kuwait**¹⁵ reiterated their earlier proposal to map an agreement or convention or treaty under the auspices of AALCO comprising of human rights principles so that Member States could make commitment on the protection of human rights. These principles should reflect Asian African legal culture and ethics. The Delegation also fully supported the Meeting on Human Rights in Islam in Kuala Lumpur to study the matters related to human rights in Islam. In addition, to respect of human rights, part of which is freedom of speech, the delegation denounced the insult by some media on the Islamic faith and the Prophet Mohammed and requested that respect should be given to one's faith and whatever pertains to religion and belief.

The Meeting was thereafter adjourned

¹⁴ Statement delivered in Arabic. Unofficial translation from the interpreter's version.

¹⁵ Statement delivered in Arabic. Unofficial translation from the interpreter's version.