

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



**AN EFFECTIVE INTERNATIONAL LEGAL INSTRUMENT AGAINST
CORRUPTION**

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AN EFFECTIVE INTERNATIONAL LEGAL INSTRUMENT AGAINST CORRUPTION

I. INTRODUCTION

1. In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (resolution 55/25,) was desirable; decided to begin the elaboration of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention; requested the Secretary-General to prepare a report analyzing all relevant international instruments and recommendations addressing corruption and to submit it to the Commission on Crime Prevention and Criminal Justice; and requested the Commission, to review and assess the report of the Secretary-General and, on that basis, to provide recommendations and guidance as to future work on the development of a legal instrument against corruption.

2. In its resolution 55/188 of 20 December 2000, the General Assembly reiterated its request to the Secretary-General, as contained in resolution 55/61, to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of the future legal instrument against corruption, and invited the expert group to examine the question of illegally transferred funds and the return of such funds to the countries of origin. Furthermore the General Assembly decided to establish an ad hoc Committee for negotiating of such an instrument.

3. In its resolution 2001/13 of 24 July 2001, the Economic and Social Council requested the intergovernmental open-ended expert group referred to in General Assembly resolution 55/61 to consider, within the context of its mandates, the following issues: (a) strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, including the laundering of funds derived from acts of corruption, and promoting ways and means of enabling the return of such funds; (b) developing the measures necessary to ensure that those working in banking systems and other financial institutions contribute to the prevention of the transfer of funds of illicit origin derived from acts of corruption, for example, by recording transactions in a transparent manner, and to facilitate the return of those funds; (c) defining funds derived from acts of corruption as proceeds of crime and establishing that an act of corruption may be a predicate offence in relation to money-laundering; and (d) determining the appropriate countries to which funds, referred to above, should be returned and the appropriate procedures for such return.

4. Pursuant to General Assembly resolution 55/61, the Intergovernmental Open-Ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of a Future Legal Instrument against Corruption was held in Vienna from 30 July to 3 August 2001 and recommended to the Assembly, through the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council, the adoption of a draft resolution on the terms of reference for the negotiation of an international legal instrument against corruption. The draft resolution was subsequently adopted as Assembly resolution 56/260 of 31 January 2002.

5. In its resolution 56/260, the General Assembly decided that the ad hoc committee established pursuant to resolution 55/61 should negotiate a broad and effective convention, which, subject to the final determination of its title, should be referred to as the "United

Nations Convention against Corruption.”

6. In the resolution, the General Assembly requested the Ad Hoc Committee, in developing the draft convention, to adopt a comprehensive and multidisciplinary approach and to consider, *inter alia*, the following indicative elements: definitions; scope; protection of sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation.

7. The General Assembly also invited the Ad Hoc Committee to draw on the report of the Intergovernmental Open-Ended Expert Group, on the report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption, as well as on the relevant parts of the report of the Commission on Crime Prevention and Criminal Justice on its tenth session, 1 and in particular on paragraph 1 of Economic and Social Council resolution 2002/13 as resource materials in the accomplishment of its tasks.

8. The General Assembly requested the Ad Hoc Committee to take into consideration existing international legal instruments against corruption and, whenever relevant, the United Nations Convention against Transnational Organized Crime; decided that the ad hoc committee should be convened in Vienna in 2002 and 2003, as required, and should hold no fewer than three sessions of two weeks each per year; requested the ad hoc committee to complete its work by the end of 2003.

9. Parallel to the negotiations within the United Nations, an Inter-governmental group, known as Global forum, has held three Ministerial level meetings so far to contributed to the efforts of the United Nations. The AALCO Secretary-General was invited to attend Global Forum II and III, which was held in the Hague (2001) and Seoul (2003), respectively.

10. This brief report provides a brief overview of the developments in the implementation of the UN Convention against Corruption, the anti-corruption provisions in the Convention against Transnational Organized Crime and the deliberations at the 43rd Session of AALCO held at Bali, Indonesia 21-25 June 2004, and the Secretariat views and comments. A comprehensive overview of the UN Convention against Corruption had been prepared by the Secretariat and presented to the 43rd Session which could be found in the document no. AALCO/43/BALI/2004/S12. The report also provides the highlights of the book “Combating Corruption: A Legal Analysis” prepared by the Secretariat to be submitted to the Member States at the Forth-Forth Session to be held in Nairobi, Kenya (27 June to 1 July 2005).

II. DEVELOPMENTS IN THE RATIFICATION AND IMPLEMENTATION OF THE UN CONVENTION AGAINST CORRUPTION

11. The High-level Political Conference held in Merida, Mexico on 9 to 11 December 2003, opened the UN Convention against Corruption for signing and ratification.¹ 95 Ministers, Attorney Generals, or other dignitaries, having full power to sign, signed the UN Convention against Corruption at the Conference.² One International Economic Organization also signed the Convention. Of the 95 States signatories to the Convention, 22 were AALCO Member States. They are: China, Cyprus, Egypt, Islamic Republic of Iran, Japan, Jordan, Kenya, Kuwait, Malaysia, Mauritius, Nepal, Nigeria, Pakistan, Philippines, Republic of Korea, Senegal, Sierra Leone, Syrian Arab Republic, Thailand, Turkey, Uganda, and United Republic of Tanzania.

12. Since then eight more AALCO Member States, Indonesia, Libyan Arab Jamahiriya, Saudi Arabia, Bahrain, Brunei Darussalam, Sri Lanka, Sudan, and South Africa have signed the Convention after the Merida Conference, bring the total number of AALCO Member Countries, signatories to the Convention to 30. It is remarkable that Kenya, one of our Member States, was the first country to deposit the instrument of ratification to the Conference. Indeed, it was the first time that a country had signed a UN Convention and deposited the instrument of ratification on the first day of a signing conference.

13. The Convention shall enter into force on the 90th day after 30 nations have formally ratified it. The Convention has presently 118 signatories and 18 parties.³ Of the State Parties who have ratified the Convention eight are AALCO Member States. They are: Egypt, Jordan, Kenya, Mauritius, Nigeria, Sierra Leone, South Africa, Sri Lanka, and Uganda. The Convention needs 12 more ratification to enter into force. While ratifying the Convention, South Africa has made a reservation that "... pending a decision by the Government of the Republic of South Africa on the compulsory jurisdiction of the International Court of Justice, the Government of the Republic does not consider itself bound by the terms of Article 66 (2) of the Convention which provides for the compulsory jurisdiction of the International Court of Justice in differences arising out of the interpretation or application of the Convention. The Republic will adhere to the position that, for the submission of a particular dispute for

¹ 111 States were represented at the Conference. Apart from States, observers from United Nations Secretariat units, and other entities and specialized agencies of the United Nations system and intergovernmental or non-governmental organization also attended the Conference. Over 18 experts participated in the conference as observers. Ambassador Dr. Ali Reza Deihim, Deputy Secretary-General, represented the AALCO Secretariat and delivered a statement on behalf of AALCO in the plenary session.

² The list of the signatories are as follows: Algeria, Angola, Argentina, Australia, Austria, Barbados, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Cameroon, Cape Verde, China, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, Germany, Greece, Guatemala, Haiti, Hungary, Ireland, Islamic Republic of Iran, Italy, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Liechtenstein, Lithuania, Luxembourg, Comoros, Madagascar, Malaysia, Mali, Mauritius, Mexico, Morocco, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Senegal, Sierra Leone, Slovakia, South Africa, Sweden, Switzerland, Syrian Arab Republic, Thailand, Timor-Leste, Togo, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam.

³ Algeria, Belarus, Benin, Ecuador, Egypt, Jordan, Kenya, Madagascar, Mauritius, Mexico, Namibia, Nigeria, Peru, Romania, Sierra Leone, South Africa, Sri Lanka, and Uganda.

settlement by the International Court, the consent of all the parties to the dispute is required in every individual case."

UNODC Work on Implementation of the UN Convention against Corruption

14. The primary focus of UN Officer for Drugs and Crime (ODC) must be to ensure that the Convention enters into force. Parallel to this, effort has been made to expand the programme of technical assistance in line with the provisions of the Convention in specific focus areas and to those countries whose needs are the greatest. A critical focus of the Convention is prevention (Chapter 2) i.e., providing the institutional and regulatory framework to reduce the likelihood of corrupt practices in the first instance. Ensuring that this preventive framework is in place in societies severely affected by corruption constitutes the foundation for all other technical assistance activities. Assistance will be aimed at those States that face notably high levels of corruption, or that have shown themselves to be particularly vulnerable to corrupt practices, yet where the authorities demonstrate a clear commitment to addressing the problem in a serious and comprehensive manner.

15. Several other international organisations, such as, the World Bank, UNDP, the OECD, as well as bilateral development agencies are already active in assisting States in the fight against corruption. What is required is an integrated and multi-disciplinary approach, drawing on the resources and expertise of all agencies involved in the fight against corruption. UNODC, as the custodian of the Convention, will contribute to their efforts by guiding policy making and providing substantive expertise. The International Group for Anti-Corruption Cooperation (IGAC), an initiative of UNODC, will continue to enhance coordination and ensure the development of relevant joint projects. Promoting a global response ensures that resources are maximised, duplication avoided, comparative areas of expertise developed and as many relevant stakeholders as possible are mobilised in integrated, creative and constructive ways.

16. Since UNODC first launched the Global Programme against Corruption (GPAC) in 1999, it has been active in four main areas, namely (1) providing technical assistance to Member States in strengthening their legal and institutional anti-corruption framework; (2) strengthening judicial integrity; (3) developing and disseminating anticorruption policies and tools; and (4) enhancing interagency anti-corruption coordination. More specifically, the Programme provided technical assistance to Lebanon, Hungary, South Africa, Colombia, Romania and Nigeria, launched new projects in Indonesia, Mozambique and Iran, and developed further technical assistance initiatives for Afghanistan, and the West Bank/Gaza. The independent evaluation of these activities have been positive, confirming that UNODC through its technical expertise can make an important contribution to the fight against corruption. Until such time as the Convention enters into force, the Office will provide technical assistance to Member States, through legal advisory services for the ratification of the Convention, and through technical cooperation projects focusing on preventive measures for which no international legal mandate is required. The latter will essentially cover four areas which, if tackled correctly, will provide critical building blocks towards achieving corruption-free societies. These four areas are:

1. National anti-corruption policies and mechanisms;
2. Strengthening judicial integrity and capacity;
3. Promoting integrity in the public and private sectors;
4. Denying the proceeds of corruption and facilitate the recovery of illicit assets.

III. ANTI-CORRUPTION PROVISIONS IN UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

17. Though the UN Convention against Corruption has not yet entered into force, the UN Convention against Transnational Organized Crime (TOC), which has already entered into force, have number of provisions for criminalizing corruption and money laundering. The main goals of the Convention against Transnational Organized Crime is to eliminate the differences among the national legal system and set standards for domestic laws so that they can effectively combat organized crimes, one of which is corruption. It provides for strong measures allowing law enforcers to confiscate criminal assets and crack down on money laundering to put an end to transnational crime profiting.⁴

(i) Criminalization of corruption

18. The Convention seeks to align national laws in criminalizing acts committed by organized crime groups. These acts include agreeing with one or more other persons to commit a serious crime for financial or other material gain. They also include organizing, directing or aiding serious offences committed by an organized criminal group.

19. The Convention further criminalizes acts of corruption aid and abets the rapid growth of organized crime. For the first time in an international convention, companies and corporation become liable for taking part in or profiting serious crimes involving an organized criminal group as well as for money-laundering activities. The Convention provides for proper punishment for these business entities, which include substantial economic penalties.

20. The Convention also requires each State Party to adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

(ii) Combating Money-laundering

21. Organized criminal groups garner huge profits and launder them into safe accounts. It remains to be a major challenge to curtail the storage of these profits. Thus the Convention seeks States to set up machinery to regulate financial institutions, outlaw anonymous bank account or accounts in false names, set up financial intelligence units to collect, analyze and disseminate information about potential money laundering and other financial crimes. This provision would complement the similar provision in the UN Convention against Corruption.

22. At the first Conference of Parties to the UN Convention against Transnational Organized Crime, the Secretariat had prepared a multi-year programme of work for the coming years. Such a programme of work enabled the Conference to structure its activities in a manner that would permit it to promote and review the implementation of the UN Convention on Transnational Organized Crime in more detailed and in depth manner. For the year 2005, the Secretariat submitted for the consideration of the Conference, which are related to the UN Convention against Corruption are on: Criminilization of the laundering of the proceeds of crime and Measures against Corruption.

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147 States have signed the Convention and 90 States have either ratified or acceded to it.

(iii) Strategic Framework for Action

23. At the request of the Conference of Parties to the United Nations Convention against Transnational Organized Crime, the Secretariat prepared a multi-year programme of work. Such a programme of work enabled the Conference to structure its activities in a manner that would permit it to promote and review the implementation of this Convention in more detail and in more depth. Such a programme may also enable State parties to focus the provisions in more detail while implementing the Convention.

24. On the basis of the above considerations, the Secretariat submitted for the consideration of the Conference the following workplan:

- (a) Second session (2005). Consideration of the implementation of the following articles: 5 (Criminalization of participation in an organized criminal group), 6 (Criminalization of the laundering of proceeds of crime), 7 (Measures against corruption), 10 (Liability of legal persons), 11 (Prosecution, adjudication and sanctions), 12 (Confiscation and seizure), 22 (Establishment of criminal record), 23 (Criminalization of obstruction of justice) and 34 (Implementation of the Convention);
- (b) Third Session (2006). Consideration of the implementation of the following articles: 16 (Extradition), 17 (Transfer of sentenced persons), 18 (Mutual legal assistance), 13 (International cooperation for purposes of confiscation), 14 (Disposal of confiscated proceeds of crime or property), 19 (Joint investigations), 20 (Special investigative techniques), 21 (Transfer of criminal proceedings), 27 (Law enforcement cooperation) and 15 (Jurisdiction);
- (c) Fourth session (2008). Consideration of the implementation of the following articles: 24 (Protection of witnesses), 25 (Assistance to and protection of witnesses) and 26 (Measures to enhance cooperation with law enforcement authorities)

25. In addition to and in conjunction with the articles mentioned under each session above, the Conference would also consider at each session the implementation of articles 28 (Collection, exchange and analysis of information on the nature of organized crime), 29 (Training and technical assistance), 30 (Other measures: implementation of the Convention through economic development and technical assistance) and 31 (Prevention), as they are relevant to the entire Convention.

(iv) Possible mechanisms for the periodic review of the implementation of the Convention

26. The multi-year workplan suggested would enable the Conference of the Parties to address the following issues:

- (a) 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;
- (b) 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;
- (c) 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;

27. Once the Conference has 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 may wish to establish an open-ended informal working group to review the proposals made above and to make recommendations to the Conference.

IV. HIGHLIGHTS OF THE BOOK ON ‘COMBATING CORRUPTION: A LEGAL ANALYSIS’ UNDER PREPARED BY THE SECRETARIAT

28. International corruption today has become one of the most salient manifestations of the organized crime syndicate of the globalized world, which has grave national and international ramifications. Corruption is a multi-faceted phenomenon and the concept contains too many connotations to provide an analytically or functional definition. The forms of corruption are diverse in terms of who are the actors, initiators and profiteers, how it is done, and to what extent it is practiced. Also the cause and consequence of corruption are complex and diverse.

29. In the recent years, especially starting from late 1980's, the phenomenon of corruption has received a great deal of attention from the international community. The degree of attention paid to fight against corruption has been unprecedented. Efforts have been made at the national and international levels to combat this problem. The negotiation and adoption of five legally binding international anti-corruption instruments⁵ within a span of seven to eight years (1996-2003) emphasizes the threat posed by this menace. Of the many reasons the most important reason for increased attention is the realization among States that corruption weakens democratic institutions and public administration, undermines good governance, fairness and social justice, distorts the economy and competition, hinders economic and social development and dangers a society's moral force. Most importantly, the gravest concern is that corruption is used as a tool of organized crime, especially terrorism, to achieve its criminal goals.

30. The intention of this Book is to create awareness among the AALCO Member States and other Asian and African countries as to what the phenomenon of corruption entails for their national and economic development and attempts to provide the salient features of the international anti-corruption instruments developed at the regional and international level. The study also compiles all the relevant anti-corruption instruments/conventions/resolutions/documents adopted by various international and regional organizations. The Secretariat hopes that this study would be a useful reference book for the Member States in understanding and implementing the anti-corruption instruments.⁶

Part one

Phenomenon of corruption: definition, causes and consequences

This part deals with the current debate about corruption, definition of corruption, corruption classification, corruption and related concepts and causes and consequences of corruption

⁵ *The United Nations Convention against Corruption, 2003; The African Union Convention on Preventing and Combating Corruption and Related Offences, 2002; the Organization of American States Inter-American Convention against Corruption, 1996; the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction, 1997; and United Nations Convention on Transnational Organized Crimes, 2000.*

⁶ However, the study does not include in its purview corruption in the context of drug trafficking, human trafficking, organized crime, terrorism etc.

Part two:

International anti-corruption initiatives and instruments

Part two has been divided into two chapters. The first chapter deals with the United Nations anti-corruption initiatives, which provides an overview of the United Nations anti-corruption initiatives from 1975 till the adoption of the UN Convention against Corruption. The second part of the first chapter provides negotiating history and discussions in the negotiating sessions of the ad hoc committee and the highlights of the United Nations Convention against Corruption, 2003. This chapter also [provides an overview of the corruption provision in the United Nations Convention Against Transnational Organized Crime and also deals with the Global Programme Against Corruption (UPAC)

Of the various international anti-corruption instruments that have been recently signed and adopted, the UN Convention against Corruption is the most important and comprehensive of them all. All the international anti-corruption instruments, especially the African Union Convention on Preventing and Combating Corruption (2002) and OAS Inter-American Convention against Corruption (1996), have direct relevance to the UN Convention against Corruption (2003). To provide a better idea of what these Conventions entails for the Member States, Chapter Two provides a comparative analysis of the UN convention against corruption and other regional initiatives. The Chapter covers a comparative analysis of the manor provision of the Conventions such as Acts of corruption prohibited by the anti-corruption Conventions; preventative measures; prosecution, adjudication and sanction; jurisdiction; confiscation and seizure; bank secrecy; international cooperation; asset recovery; monitoring or follow-up mechanism.

Part Three

Regional anti-corruption instruments

Part three of the book deals with regional anti-corruption initiatives by regional international organizations. For the purpose of convenience, this part has been divided into two, first part dealing with legally binding instruments. Some of the major anti-corruption instrument has come in to operation in the period from 1996 till the adoption of the UN Convention against Corruption in 2003 include African Union Convention on Preventing and Combating Corruption and Related Offences, 2002, Southern African Development Community (SADC) Protocol Against Corruption, Organization of American States (OAS) Inter-American convention against corruption, 1996; OECD convention on combating bribery of foreign public officials in international business transactions, 1997 and Council of Europe: Criminal Law Convention and Civil Law Convention, 1999. This part deals with the Asia-Pacific initiative on corruption and the institution of Ombudsman in the context of anti-corruption activities.

Apart from these legally binding anti-corruption instrument, various inter-governmental organizations have also adopted various instrument, mostly non-binding, in the form of declarations, code of conduct, recommendations etc. The second part, that is chapter four highlights some of these legally non-binding instruments, which has got wide approval from member states.

Part Four
AALCO's Anti-Corruption Initiatives

Part four of the book deals with the Anti-Corruption Initiatives taken by the Asian Africa Legal Consultative Organization (AALCO) at its various annual sessions.

Part Five
General Observations

The final part of the book provides some general observation form the effective implementation of the UN Convention against Corruption.

Annexure

Apart from this explanatory and analytical part, the book would also provide a collection of all the salient anti-corruption documents.

V. CONSIDERATION OF THE ITEM DURING AALCO 43rd SESSION

31. It may be recalled that the AALCO's Legal Advisers Meeting held in New York on 20th November 2001, considered the topic of Corruption. The discussions focused on the on-going negotiations within the United Nations. It was felt that the AALCO should consider taking up such an item at its forty-first session.

32. Taking into consideration the foregoing developments, the Secretary-General proposed for inclusion of an item entitled "An Effective International Legal Instrument Against Corruption" in the provisional agenda of the AALCO's 41st Session. This suggestion was in line with the Article 4(d) of the AALCO's Statutes which provides for exchange of views and information on matters of common concern having legal implications. It was felt that the AALCO could make useful contributions to the negotiations concerning the international convention for preventing and combating corruption. In order to facilitate consideration of this topic, the Secretariat prepared a Preliminary Study which highlighted the progress made within the United Nations. The initiative taken by the Secretary-General was welcomed and the item was discussed at the AALCO's 41st Session held in Abuja, Nigeria (2001).⁷

33. At the 42nd Session of AALCO held in Seoul, Republic of Korea from 16-20 June 2003, the Secretariat gave a report on the ongoing efforts to develop an effective legal instrument against corruption. He noted that corruption is not restricted to one region, and is present even in the most developed countries. He outlined the progress in the drafting of the Convention against Corruption by the ad hoc committee established by the UN General Assembly, but noted that there are still differences of opinion in a number of areas. Delegations from Iran, Kenya, Nepal, Thailand, Indonesia, Pakistan, Republic of Korea, Malaysia, the United Republic of Tanzania and Nigeria expressed their support for the draft Convention, and the need to prevent and suppress corruption. A Resolution was adopted urging the Member States to actively participate in the work of the Ad Hoc Committee and mandating the AALCO to continue monitor the developments in the drafting of the UN Convention against Corruption.

34. At the 43rd Session of AALCO held in Bali, Indonesia from 21-25 June 2004, Amb. Dr. Ali Reza Deihim, Deputy Secretary-General of AALCO in his introductory statement noted that 107 countries had so far signed the UN Convention against Corruption and as the requisite 30 ratifications is not large, the Convention will come into place very soon. He noted that Kenya and Sri Lanka, two of AALCO Member States, were the first countries to ratify the Convention. He then highlighted some of the salient features of the Convention, which according to him commits States parties to take a number of measures and standards, domestically and internationally, to implement the provisions of the Convention. He said that the Convention breaks new ground with its provisions on prevention and asset recovery. However, he felt that without effective and good faith implementation of these provisions, the real root causes of corruption and its devastating consequences could not be fought. He hoped that the Asian African countries would be in the forefront in the ratification of the Convention and suggested that the AALCO Secretariat could organize a workshop/seminar for the benefit of AALCO Member States.

35. Delegations from United Republic of Tanzania, Sri Lanka, Mauritius, Thailand,

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The Resolution adopted at that session urged the Member States to actively participate in the work of the Ad Hoc Committee

Nigeria, Malaysia, Republic of Indonesia, Kenya, South Africa, Kuwait, Pakistan, Nepal and People's Republic of China expressed the need to prevent and suppress corruption and said that the adoption of the UN Convention against Corruption was timely. Many Delegations felt that corruption is a problem to economic development and that global effort was needed to fight it. Many delegations outlined the measures being undertaken in their own countries to combat corruption through legislative means. Delegations from Kenya and Sri Lanka, the only countries to sign and ratify the Convention, informed about their attempts to incorporate the Convention into their domestic laws. Some delegations requested that AALCO should actively follow this item and the need to establish close cooperation among relevant institutions and to organize a seminar for the purpose of exchanging of views and experiences in this matter with all Member States of AALCO.

36. The **Delegate of the United Republic of Tanzania** noted that an effective regime for the prevention of corruption requires a macro definition of corruption to encompass a workable relationship on the subject across the Member States; create an effective mechanism for tracing the suspects around the globe, apprehend them and bring them to justice wherever justice will be available.

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

38. The **Delegate from Sri Lanka** said that Sri Lanka recognizing the importance of combating corruption at both the domestic and international level, was proud to state that Sri Lanka also had ratified the Convention. Sri Lanka was presently reviewing the domestic legislation to introduce new enabling legislation in conformity with the Convention. She also recognizes the importance of entering into Mutual Assistance Treaties to effectively implement the proposed new laws.

39. The **Delegate from Mauritius** said that the adoption of the UN Convention against Corruption was in the right direction. In this context he said that Mauritius had enacted the Anti Corruption Laws before the beginning of Merida Conference and also had established a Independent Commission against Corruption. He said that the African leaders are fully conscious of the threat of corruption and had in the context of the NEPAD adopted a Peer Review Mechanism to ensure that States in Africa promote and practice good governance in the conduct of their national affairs. Ghana, Mauritius, Kenya and Botswana have volunteered to the Mechanism. This is welcoming measure and was a proof that States in Africa is prepared to be scrutinized by their peers. The adoption of the Peer Mechanism was a ground breaking and historic measure.

40. The **Delegate from Thailand** felt that regional cooperation in this matter by the Asian and African States will help to further promote the cooperation at the global level in the fight against corruption. He stated that one of the most important policies of Thailand was to eradicate narcotic drugs, poverty, and corruption. The present Thai Constitution, which had

been in force since 1997, had also stipulated the establishment of agencies and mechanism to combat corruption. Further, the independent National Committee on Counter Corruption was the foremost agency in this regard.

41. Many other pieces of legislation had also been passed to guarantee transparency in the government. The Freedom of Information Act guarantees the public access to government documents. The Administrative Court Act sets up administrative courts to guarantee transparency in administrative decisions. The Act against Collusion in Public Procurement guarantees transparency in government procurement procedures. The Anti-Money Laundering Act and the subsequent setting up of the Anti-Money Laundering Office four years ago had been an effective instrument against both drugs and corruption. Thailand was among the countries that had signed the United Nations Convention against Corruption and the Ministry of Justice of Thailand had established a committee to consider the obligations of the Convention in order for Thailand to become a party. He hoped that once the internal process had been complied with, Thailand could soon become the party to the Convention.

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

43. The **Delegate from Malaysia** said that Malaysia became the 37th Signatory State of the United Nations Convention against Corruption hoped that Member States could utilize this Convention as a binding legal instrument in fighting corruption in a more effective way. Malaysia had enacted specific laws to deal with matters relating to corruption, including good governance and programmes on upholding the integrity of public and private officials. Domestic legislation on corruption, anti-money laundering, provisions on confiscation of illegal proceeds and provisions on international cooperation in criminal matters were already in place. The principal law to be utilized in implementing this Convention was the Anti-Corruption Act 1997. In addition, Malaysia's Anti-Corruption Agency (ACA) was also established.

44. Malaysia recognizes that the fight against corruption requires close cooperation among countries. In promoting cooperation, Malaysia had also commenced negotiation with other ASEAN Member Countries on Mutual Assistance in Criminal Matters Treaty for the consideration of other like-minded ASEAN Member Countries. Malaysia's proposal received positive support from other ASEAN Member Countries.

45. The **Delegate of Indonesia** said that among significant efforts initiated by Indonesia to prevent and combat the act of corruption was the establishment of National Commission on Combating Criminal Act of Corruption. It was an autonomous body and designed to be independent from political influence from any quarters. In a not too distant future, an independent Anti-Corruption Court shall be established with the authority to examine and judge criminal acts of corruption.

46. He said that Indonesia was currently undertaking necessary measures to ratify the UN Convention against Corruption. He believed that the Convention could serve as a strong and viable basis for international cooperation. Bearing in mind that information and best practice in combating corruption should be accessible to public as reference tool, AALCO Member

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

47. The **Delegate of Kenya** is the first country to sign and ratify the UN Convention Against Corruption and had already put in place the measures for the ratification of the African Union Convention on combating corruption. In legal strategy, Kenya enacted the Public Officers Ethics Act, 2003. The main objective of the Act is to stem the culture of corruption, nepotism, patriarchy and similar vices. Kenya had also establishment of the Governance and Ethics Office in the Office of the President and enacted two statutes, the Anti-Corruption and Economic Crimes Acts, with an expanded definition of corruption to cover it in all forms, which had gone a long way in strengthening our legal framework against corruption, and which encompasses the purposes and spirit of the United Nations Convention Against Corruption.

48. The **Delegate of South Africa** said that South Africa in recognition of the destabilizing effects of corruption established under the Office of the National Director of Public Prosecution an independent 'anti-corruption' body called the 'asset forfeiture unit' which was regulated by a legislation focusing on organized crime. He said that the UN Convention against Corruption is a welcoming step and was studying the Convention with the view to ratify it.

49. The **Delegate of Kuwait** said that this item is very important, especially in the administration of a Country. He said the Kuwait had legislations to prevent the problems of corruption. The domestic law of Kuwait provides for prevention of embezzlement, money laundering etc. He said that Kuwait had signed the UN convention against Corruption at the Merida Conference. Kuwait, he said was looking in to the feasibility of implementing this Convention.

50. The **Delegate of Pakistan** said that the Government of Pakistan was in the process of ratifying the UN Convention and it had already signed the Convention. He said that Pakistan had established a full fledged department known as National Accountability Bureau headed by the Chairman. The National Accountability Bureau has recovered huge amount of Assets those were amassed by different forms of corruption.

51. The **Delegate of Nepal** said that Nepal had already signed the Convention, thereby covenanting not to take any action that would be contrary to and defy the objects and purposes of the Convention, and was in the process of completing necessary domestic legal formalities for the ratification of the Convention. He said that in order to combat corruption efficiently and effectively, a system based on law had been set forth in his country. An independent anti-corruption institution, the Commission for the Investigation of Abuse of Authority, had been established under the Constitution of the Kingdom of Nepal, 1990 for investigation and prosecution of corruption cases. The Prevention of Corruption Act, 2002 and the Commission for the Investigation of Abuse of Authority Act, 1991 had been serving as strong legislative back ups for this institution. Most remarkably, provisions on the onus of

proof lying with the accused and confiscation of disappropriated assets had also been envisaged to prevent corruption. Moreover, a special court was also been created to try cases relating to corruption.

52. The **Delegate from the Peoples Republic of China** said that, China had signed the Convention against Corruption in Merida, Mexico, as China attaches great importance to combating corruption. The Chinese Government had taken a lot of measures to tackle the problem. Many corruption criminals have been brought to justice in accordance with relevant domestic laws and regulations. However, a great amount of national assets and proceeds were still being transferred, and quite a few corruption criminals had escaped, abroad, the destinations being mostly western countries. Without treaties on Extradition or Mutual Assistance with them, it was extremely difficult for China to cooperate with them on a case-by-case basis. He felt that Asian-African nations have common interests, same missions and one voice in combating corruption. China looks forward to cooperating with all nations on the basis of the UN Convention against Corruption.

53. A resolution was adopted at the 43rd Session urging AALCO Member States to ratify and implement the Convention and send their national legislations in combating corruption in order to establish a network between law enforcement agencies. Till date the Secretariat had only received the national legislations on corruption from Republic of Korea, Peoples Republic of China and Republic of Cyprus

VI. GENERAL COMMENTS

1. Corruption is a global problem which poses serious threat to the development of a country. States, developed or developing, are equal victims of this problem. Corruption, apart from affecting the public at large, also causes reduced investment, social polarization, lack of respect for the rule of law and human rights, undemocratic practices and diversion of funds intended for development and essential services, affects government's ability to provide basic services to its citizens and to encourage sustainable economic, social and political development. Most importantly, corruption has the greatest impact on the most vulnerable part of a country's population, the poor.

2. Establishing a legal framework at the national and international level to combat corruption is by no means an easy task. While many States have already embarked upon a national strategy to deal with corruption, the issue as a transnational crime poses many challenges. The different legal systems do not have the same notion about establishing "criminality" regarding corruption as a crime. The lack of effective cooperation in sharing of information and investigation, the complications in judicial assistance, bank secrecy regulation etc., are just few examples which pose problem of great magnitude.

3. More and more countries, having seen that bribery and cronyism have hold back development, had been asking the United Nations to help them gain the tools to curb such practices. As causes of corruption are different from one country to another, and preventive, enforcement and prosecutorial measures that work in some countries may not work in others, the United Nations, an organization with universal membership and a global mandate, is ideally positioned to deal with global challenges. Further, States have accepted the fact that corruption is a global phenomenon and mandated UN Office for Drug Control and Crime Prevention (ODCP) through the General Assembly to support the negotiation of the United Nations Convention against Corruption.

4. The Ad Hoc Committee entrusted with the drafting of the Convention finalized the text of a new international treaty, the United Nations Convention against Corruption at its seventh session. The consensus achieved in the UN General Assembly while adopting the Convention was reflective of its true global acceptance and application. The high-level Political Signing Conference of the UN Convention against Corruption held in Mexico on 9-11 December 2003 had opened the Convention for ratification. The Convention has provided a comprehensive tool and a definite step forward in the international effort to fight corruption. Its adoption marks the larger trend towards greater international regulation of corruption in public and private life.

5. From a substance viewpoint, the Convention breaks new ground with its provisions on prevention and asset recovery. This Convention is innovative because it is a very balanced instrument. It provides for law enforcement as well as for preventive measures. It offers technical assistance to help countries implement the preventive tools. Being a United Nations Convention, it has a potentially universal scope of application, differently from other existing instruments.

6. However, it may be noted that a number of originally envisaged articles had been deleted or alterations and new insertions are made by the Ad Hoc Committee all along the drafting of the Convention starting from the first to the final draft. This trend was quite noticeable at the fifth and the sixth session of the Ad Hoc Committee. It may also be noted

that many important provisions had been deleted, and the severity of number provisions such as the chapter on ‘implementing mechanism’, ‘political funding’ etc., had been diluted to a considerable extent to accommodate the divergent views of the member states and reach compromises among them. This will reflect on the effectiveness of the Convention.

7. Further some of the provision, especially relating to cooperation is ambiguous. What type of cooperation is being sought and how would such cooperation be implemented in practice has not been mentioned. Other ambiguous provisions are found calling for the establishment of an adequate supervisory framework for financial institutions, promotion of transparency among private entities, prevention of the misuse of public procedures regulating private entities etc.

8. During the period covered by this report there has not been any new development. The reason being that though 118 States had signed the convention only 18 had ratified so far and need 12 more ratification for the Convention to enter into force. Despite this trend, the finalization of the United Nations Convention against Corruption is indeed a real achievement in the global fight against corruption. It is hoped that the earlier deleted provision may come back in the form of Protocols to the Convention against Corruption in the near future.

9. Finally, one must acknowledge the immense contribution made by the UN Office for Drug and Crime (UNODC) in the preparation of this Convention. It is also encouraging to note that the UNODC has already started the technical assistance programme, keeping in view the commitment in Chapter 2, Preventive Measures of the UN Convention against Corruption. AALCO is looking forward to establish close relation with the UNODC to initiate joint programmes for promoting wider ratification of the Convention among the Asian-African countries. As regards the Interpretative notes for the official records (*travaux préparatoires*) to facilitate the common understanding of some provisions and terms used in this Convention prepared by the Ad Hoc Committee, it is hoped that the General Assembly would adopt this document. Further, it is hoped that the Asian African countries would be in the forefront in the ratification of the Convention and in enacting implementing legislation.

10. In this context, as mandated by the resolution adopted at the 43rd Session of AALCO, and as a follow-up, the Secretariat is preparing a book “Combating Corruption: A Legal Analysis”, as well as a CD for the benefit of the AALCO Member States. As the book prepared by the Secretariat contains all the anti-corruption documents as annex, no document is herewith. Further, as a follow-up, the Secretariat would also like to prepare a compilation of Anti-Corruption legislations of the AALCO Member States. In this regard, the Secretariat once again recalls the resolution adopted at the 43rd Session urging AALCO Member States to send their respective anti-corruption national legislations to the Secretariat.

11. It may also to be noted that the Government of Thailand, hosts the Eleventh United Nations Congress on Crime Prevention and Criminal Justice in Bangkok, 18-25 April 2005. The United Nations General Assembly decided that the main theme of the Eleventh Congress shall be “Synergies and responses: strategic alliances in crime prevention and criminal justice”. There are five substantive items on the agenda of the Congress: Effective measures to combat transnational organized crime; International cooperation against terrorism and links between terrorism and other criminal activities; Corruption: threats and trends in the twenty-first century; Economic and financial crimes: challenges to sustainable development; and Making standards work: fifty years of standard-setting in crime prevention and criminal

justice. The Secretariat endorses the words of the Executive Director of UNODC, that the Eleventh Congress is an opportunity to encourage Member States to take concrete steps to prevent transnational organized crime, terrorism and corruption by ratifying international instruments, thus showing their commitment towards implementation and enhancement of international cooperation.