

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



**ESTABLISHING COOPERATION AGAINST TRAFFICKING IN WOMEN AND
CHILDREN**

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ESTABLISHING COOPERATION AGAINST TRAFFICKING IN WOMEN AND CHILDREN

I. BACKGROUND

1. The topic “Establishing Cooperation against Trafficking in Women and Children” was included on the agenda of the AALCO at its Fortieth session held in New Delhi, in June 20-24, 2001 upon a proposal by the Government of Indonesia. In the explanatory note the Government of Indonesia pointed out that trafficking in women and children, a transnational organized crime, was truly international in nature and increasingly became a global concern, since the menace of this crime has no boundary. Countries in Asia and Africa as in other regions are not immune from the menace of this crime. The international community has addressed this issue and considered it to be a global threat and in response to this threat, drafted the United Nations Convention against Transnational Organized Crime and Protocol to Prevent, Suppress and punish Trafficking in Persons, especially Women and Children were adopted by the General Assembly at its millennium meeting in November 2000.

2. The Government of Indonesia emphasized that the UN Convention against Transnational Organized Crime, particularly its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children is intended to combat trafficking in persons and facilitate international cooperation against such trafficking.¹ Therefore, participation in large numbers in the Convention and the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children will strengthen the cooperation in combating the crime of trafficking in human beings. In this regard the Government of Indonesia earnestly hopes that those Member States who have signed the above said Protocol consider ratifying it and that the protocol be fully implemented immediately after the ratification by the respective governments.

3. The Government of Indonesia believes that the inclusion of the topic on the agenda of the AALCO would facilitate the deliberations on the topic which would, in turn, help to establish cooperation between Member States in preventing and combating the crime of trafficking in women and children. For the scope of cooperation, significant issues were proposed by the Indonesian Government, namely, the role of law enforcement in the trafficking in women and children cases; prosecutorial strategies; model legislation and international agreements; intelligence sharing and effective resource utilization and other initiatives.

¹ The Convention, concluded at the 10th session of the Ad Hoc Committee established by the General Assembly to deal with this problem, is a legally binding instrument committing States that ratify it to taking a series of measures against transnational organized crime. These include the creation of domestic criminal offences to combat the problem, and the adoption of new, sweeping frameworks for mutual legal assistance, extradition, law-enforcement cooperation and technical assistance and training.

4. At the Forty-Third session, held in June 2004 in Bali, Indonesia, the resolution (RES/43/SP 1) adopted after in depth and thought provoking presentations and discussions at the Special Meeting on the topic, reiterated *inter alia*, the request for Member States, who are not party to the Convention and its Protocol, to consider becoming parties to the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. It further requested Member States to transmit to the AALCO Secretariat their national legislation if any on the subject, if they have not done so.² Also, the resolution directed the Secretary-General to develop, in cooperation with Member States, a Model Law for the criminalisation of trafficking in persons as well as protection of victims of trafficking, before, during and after criminal proceedings, based on human rights approach with a view to developing a concrete action plan for a joint effort against trafficking in persons, specially women and children.³

5. As a first step towards fulfilling the mandate entrusted to the Secretary-General vide RES/43/SP 1 and as an initial step towards drafting a Model Law, the Secretariat shall study the national legislations received from the Member States of AALCO in light of the Protocol to Suppress, Punish and Prevent Trafficking in Persons, prepare an outline with a view to developing a concrete action plan for a joint effort against trafficking in persons, especially women and children. Accordingly an outline of the model law in the form of addendum was presented at the Forty-Forth Session, for consideration of the Member States.

6. During the Forty-Fourth session of the AALCO in Nairobi, Kenya, in June-July 2005, delegations reiterated and emphasized on the urgent need for cooperation within the framework of the Convention and the Protocols. During the Forty-Forth session, most of the delegations supported for a model legislation on this issue. However, the delegation of Indonesia recommended undertaking an in-depth discussion or workshop for preparation of a set of draft model legislation for the criminalization of trafficking in persons. Other delegations primarily spoke regarding the following aspects: recognized that trafficking in persons, especially women and children, was a serious problem in the Asian-African region; the imperative need for an internationally coordinated effort to develop an effective strategy to combat this grave crime; highlighting the domestic endeavours undertaken in their respective countries, and reiterating the importance of becoming parties to the international legal instruments related to trafficking in persons. It was also considered to take note of the work undertaken by other organizations so that their initiatives like the 'Bali Process' could also be studied carefully in order to avoid duplication.

7. In this backdrop, this brief prepared for the consideration at the Forty-Fifth Session scheduled to be held at the Headquarters (New Delhi), in April 2005, would

² So far the Secretariat has received responses from the following Member States relating to their respective national legislations on the topic: **Tanzania, Sultanate of Oman, Singapore, People's Republic of China, Republic of Korea, Philippines, Japan, Mauritius, Cyprus, Ghana, Qatar, United Arab Emirates, Sudan, Nepal, Lebanon, Myanmar, Syrian Arab Republic, Arab Republic of Egypt, Malaysia, The republic of Uganda Thailand and Kuwait.**

³ Operative Para 9 of the Resolution (RES/43/SP1).

analyse various dimensions of the issue of trafficking in persons, particularly women and children as well as outlines the recent international developments on the topic.

II. INTRODUCTION

8. Trafficking in persons, especially women and children, is a global human rights violation, which is considered to be a contemporary form of slavery, recognized by the international community.³ The statistics of the number of persons trafficked every year though increasing is not available. However, the estimates provide that approximately 8,00,000 to 9,00,000 persons, mainly women and children are trafficked annually across national borders and are placed in the conditions of slavery and slave-like conditions and later on engaged in forced prostitution, forced labour, domestic work, begging or used for organ transplants.

9. The issue of trafficking in persons is multifaceted and multidimensional. It is to be dealt from a human rights perspective too, since it is closely related to other major international issues like illegal migration and organized crime. The studies indicate the inter-linkages between organized crime and trafficking in persons are two-fold: vertical and horizontal. Firstly, trafficking in persons consists of chains of individual, vertical offences, which are in close relationship with each other. Such crimes in vertical relationship are, *inter alia*, corruption, counterfeiting of traveling documents and violation of immigration laws. Secondly, there are horizontal connections between different criminal activities by the same organization. Criminal groups involved in particular in trafficking business are also involved in other types of criminal activities, such as various forms of sexual exploitation (including prostitution), illegal arms and/or drug trafficking. Furthermore, money received from these activities is to be laundered.

10. From human rights perspective, trafficking in persons, becomes highly significant since most of the basic human rights of the person trafficked are curtailed and violated. Those rights may be classified as right to life especially right to live with human dignity and security, freedom of movement, the right to work (and receive pay) and the right to health along with their right not to be subjected to torture or inhuman treatment. Women are generally trafficked for a very meager amount (which obviously would not be of any benefit to her) even without the consent of the person, which forces them to accept any form of work entrusted to them including forced labour, slavery and then to forced prostitution. Trafficking of women and children is linked with violence against women and women's human rights. All the human rights including the sexual and reproductive rights would form the gamut of 'women's human rights'. The sexual and reproductive rights of the women though are not specified in any of international legal instruments of human rights, they are implicit in all of them and are defined in an array of non-treaty human rights declarations and action platforms.⁴ Women's sexual and reproductive rights

³ The Convention, concluded at the 10th session of the Ad Hoc Committee established by the General Assembly to deal with this problem, is a legally binding instrument committing States that ratify it to taking a series of measures against transnational organized crime. These include the creation of domestic criminal offences to combat the problem, and the adoption of new, sweeping frameworks for mutual legal assistance, extradition, law-enforcement cooperation and technical assistance and training.

⁴ The Program of Action adopted at the International Conference of Population and Development (The Cairo Action Program 1994) was the first international conference to define the term "reproductive rights"

under international human rights law is a combination of civil, political, social, cultural, and economic rights. This includes the right to health and family planning; the right to life, freedom, integrity, and security; the right not to be assaulted or exploited sexually; the right not to be tortured or to be the object of cruel, inhuman, degrading punishment or treatment; the right not to be subject to sex-based discrimination; the right to privacy; the right to intimacy; and the right to enjoy scientific progress and the right not to be subjected to scientific or medical experimentation without full consent.

11. It becomes pertinent to note that the women and children trafficked belong majorly to the developing countries especially the Asian countries due to various factors.

III. FACTORS RESPONSIBLE FOR TRAFFICKING IN PERSONS

12. Socio-economic factors and aftermath of any regional and civil conflicts are the two important aspects responsible for the trafficking in persons. While the former include extreme poverty, illiteracy, economic crisis, lack of state support at home at times, the globalization of economic systems and developments in transportation and information technology (which have though lead way to enormous opportunities for human communication and economic development vis-à-vis creating new methods of organized crime); the latter include political changes, displacement etc which occurs due to the regional or civil conflicts. Among factors, there are certain factors, which lead to cross-border trafficking especially in women and children. These consist of (i) Conflicts and human rights abuses in the countries of origin, (ii) Displacement (restrictions on accessing asylum systems, unclear legal status, lack of documentation and limited humanitarian assistance), (iii) In order to escape war and terrorism, which would lead to more traumas, people migrate to another country falling into the vicious circle of poverty, refugee status, etc.

13. Together, these factors make individuals vulnerable to human trafficking trade. Also, on the other hand the market demand for the “services” that trafficking victims are forced to provide encourages trafficking trade. The above-stated reasons have a disproportionate effect on women, and combined with the low social, economic and political status of women makes them more vulnerable to trafficking. This inequality in status often results in limited educational and employment opportunities, making women and children more likely to fall prey to traffickers.

if not "sexual rights." Specifically, the International Conference on Population and Development (Cairo 1994) defined reproductive health as a "state of general physical, social and mental well-being" and not just "the absence of illness in all the aspects related to the reproductive system, its functions and processes." Reproductive health, therefore, includes the capacity to enjoy a satisfactory sexual life without risks, and the freedom to decide whether or not to have children, when and how many. For this reason, we can say that reproductive rights are recognized internationally and are binding. See also Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

IV. PROHIBITIONS OF “TRAFFICKING IN PERSONS” INTERNATIONAL LAW

1. *Anti-Slavery*

14. The prohibition against prostitutional slavery has long been a part of traditional international law. The international community has recognized the gravity of the issue of trafficking in human beings far way back in the 19th century and several efforts have been made to fight against this evil. Over the years the concept of slavery and related practices has evolved and in the beginning of the 20th century the term “white slavery” was introduced to describe a new form of slave trade – forced prostitution. International agreements and treaties on this issue were signed in 1904,⁵ 1910,⁶ 1921,⁷ and 1933.⁸ All these International Agreements addresses the issue of forced prostitution and forbid the trafficking of women or girl of full age, for any immoral purpose.

2. *Anti-Trafficking*

15. All the above mentioned anti slavery treaties were consolidated in *the 1949 U.N. Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others*. This convention is termed as the most comprehensive, consolidated and detailed one since it prohibits individuals, or countries, from procuring, enticing or leading away, another person for the purposes of prostitution, even with the consent of the person.⁹

16. However, the 1949 Convention has been strongly criticized for being ineffective, since it focused only on prostitution (including voluntary prostitution) rather than on trafficking and having no implementation and supervision mechanisms to guarantee its efficiency.¹⁰ It is argued, “The 1949 Convention arises out of a prohibitionist perspective and seeks to criminalize acts associated with prostitution, though not prostitution itself. The 1949 Convention has proved ineffective in protecting the rights of trafficked women and combating trafficking. The Convention does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason; rather, the Convention views them as vulnerable beings in need of protection from the “evils of

⁵ *International Agreement for the Suppression of the White Slave Traffic*, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83.

⁶ *International Convention for the Suppression of the White Slave Traffic*, 1910.

⁷ *The International Convention for the Suppression of the Traffic in Women and Children*, 1921.

⁸ *International Convention for the Suppression of the Traffic in Women of Full Age*, 1933.

⁹ The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Mar. 21, 1950, 96 U.N.T.S. 271. The convention expressly mandates Member Countries (i) to punish any person who keeps, manages, or knowingly finances, or takes part in the financing, of a brothel, (ii) to punish people who knowingly lease or rent a building or other facility for the purpose of prostitution, (iii) to give the aliens the same rights and privileges as of citizens of their countries for the purpose of bringing the suit against a pimp by the foreigner women who has been kidnapped and forced to prostitution.

¹⁰ See e.g. Radhika Coomaraswamy, *Report on Trafficking in Women, Women’s Migration and Violence Against Women*, Feb. 21, 2000, U.N. Doc. E/CN.4/2000/68, pp. 21-26.

prostitution”. Further, by confining the definition of trafficking to ‘trafficking for prostitution,’ the 1949 Convention excludes vast numbers of women from its protection. Documentation shows that trafficking is undertaken for a myriad of purposes, including but not limited to prostitution or other sex work, domestic, manual or industrial labour, and marriage, adoptive or other intimate relationships.”¹¹

17. The Convention also does not contain any strict implementation mechanism for the purpose of compliance with treaty provisions. Although the Convention requires States Parties to report annually to the United Nations Secretary-General in regard to implementation of the Convention at the national level,¹² no independent treaty body has been established to monitor the implementation and enforcement of the treaty.

3. *Human Rights Treaties*

18. The international community has concluded many human rights treaties subsequently, *inter alia*, to deal with this issue. Chief among them are: the Convention on the Elimination of All Forms of Discrimination against Women, 1979,¹³ the Convention on the Rights of the Child, 1989,¹⁴ the International Convention on the Protection of the Rights of All Migrant Workers and their Families, 1990, The Hague Convention on the Protection of Children and Cooperation in respect of Inter-country Adoptions, 1993, the International Labour Organization (ILO)’s Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 and the Optional protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000.¹⁵

19. The most recent development with regard to the protection of trafficking in women and children is the adoption of *the United Nations Convention Against Transnational Organized Crime* and its three Protocols.¹⁶ The Convention was adopted by the General Assembly at its Millennium meeting in November 2000. The Convention

¹¹ Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on ‘Trafficking in Women, Women’s Migration and Violence against Women’. E/CN.4/2000/68, para 22.

¹² Article 21 of the 1949 convention.

¹³ Article 6 reads as follows: States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

¹⁴ Articles 32, 34, 35, 36 and 39 of the Convention on the Rights of the Child deal with the issue.

¹⁵ In addition, there are other international declarations and plans of action addressing the problem. They are: the Plan of Action of the International Conference on Population and Development (1994) the Beijing Platform of the World Conference on Women (1995), the Declaration and Agenda for Action against Commercial Sexual Exploitation of Children adopted by the Stockholm World Congress on this issue (1996) (supplemented by the Yokohama Global Commitment (2001) as the follow-up process for the Stockholm Congress and Declaration), and the document entitled “A World Fit for Children” adopted by the UN in 2002.

¹⁶ The three protocols are: Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, (ii) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, (iii) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.

entered into force on 29 September 2003. The Convention has 147 signatories and 114 State Parties to it.¹⁷

20. The purpose of the Convention is ‘to promote cooperation to prevent and combat transnational organized crime.’¹⁸ International cooperation could be achieved by eliminating differences among national legal systems, and by setting standards for domestic laws it attempts to effectively combat organized crimes. It also 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. Further, it is noteworthy that all the provisions of the Convention are also applicable *mutatis mutandis* to the Protocols.

V. A BRIEF HISTORY OF THE PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN.

21. Before dealing with the history of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children it is essential to know the background for the UN Convention against Transnational Organized Crime. The task of the United Nations to strengthen international cooperation to combat organized crime dates back to 25 years. In 1992, the UN established the Commission on Crime Prevention and Criminal Justice in order to take action against transnational organized crime by placing it high, on the international agenda. Later, the General Assembly established an intergovernmental group of experts, which met in Warsaw (February 1998) and elaborated a preliminary draft of a possible convention. Proposals from the Warsaw Intergovernmental Group were submitted to the Commission and led to discussions on a draft resolution.¹⁹

22. Upon recommendation by the Commission, the Assembly established in December 1998 an Ad Hoc Committee for the elaboration of the United Nations Convention against Transnational Organized Crime and three additional protocols which would address: trafficking in persons, especially women and children; smuggling of

¹⁷ 37 AALCO Member States are parties to the Convention, of which 16 have signed and ratified, 17 States have only signed, and 4 have acceded to it.

The Member States which has signed and ratified are: **Arab Republic of Egypt, Botswana, China, Cyprus, Gambia, Lebanon, Libyan Arab Jamahiriya, Malaysia, Mauritius, Nigeria, Philippines, Saudi Arabia, Senegal, Sudan, Turkey, Uganda.** The Member States, which has only signed, are **India, Indonesia, Islamic Republic of Iran, Japan, Jordan, Kenya, Kuwait, Nepal, Pakistan, Republic of Korea, Sierra Leone, Singapore, Sri Lanka, Syrian Arab Republic, Thailand, United Arab Emirates, Tanzania and Republic of Yemen.** The countries that have acceded to the Convention are **Bahrain, Kenya, Myanmar and Oman.**

¹⁸ Article 1 of the Convention.

¹⁹ Argentina proposed the drafting of a new convention against trafficking in minors and Austria presented the draft of the convention on illegal trafficking and transport of migrants. Canada and Japan proposed an instrument on firearms.

migrants;²⁰ and illicit manufacturing of and trafficking in firearms, their parts, components and ammunition.²¹

VI. SIGNIFICANCE OF THE PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN.

1. Importance and Objectives

23. Every year hundreds of thousands of men, women and children are trafficked illegally all over the world, with annual earnings from trafficking in "human cargo" estimated at \$7 billion. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children sets forth three purposes: to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of such trafficking, with full respect for their human rights; and to promote cooperation among States Parties to meet these objectives.

24. *The Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* was drafted to provide a universal instrument to address all aspects of trafficking in persons, especially women and children. The Protocol characterizes trafficking in persons as an explicit crime. Essentially, the Protocol intends to "prevent and combat" trafficking in persons by requiring a comprehensive international approach in countries of origin, transit and destination and protect the victims by safeguarding their basic human rights.²² It provides for criminal offences, control and co-operation measures against traffickers. It also provides some measures to protect and assist the victims, however they are optional in nature.

25. On a comparison with the 1949 Convention it becomes evident that the Protocol defines 'trafficking' (by considering voluntary and forced prostitution also as trafficking) and do not confine to prostitution alone. The Protocol goes further to instruct on the criminal, protective, preventive and international cooperation aspects to fight against trafficking. It also combines traditional crime control measures for investigating and punishing offenders with measures for protecting trafficked persons. The Protocol will serve as a model for national legislation, detailing provisions on conduct, which should be sanctioned, the severity of punishment and effective measures to combat as well as prevent trafficking.

²⁰ The Protocol was adopted by resolution [A/RES/55/25](#) of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations.

²¹ The Protocol was adopted by resolution [55/255](#) of 31 May 2001 at the fifty-fifth session of the General Assembly of the United Nations. The Ad Hoc Committee approved the Convention in July 2000 and the protocols on trafficking in persons and smuggling of migrants in October 2000.

²² Preamble to the Protocol on Trafficking In Persons.

2. Definition of Trafficking In Persons

26. The Protocol on trafficking in persons represents a new approach to the problem in several aspects. It defines "trafficking in persons"²³ as a complex and multifaceted problem particularly when considering the involvement of transnational organized criminal groups. The issues dealt in this are two fold; one, on how to prevent trafficking and second, as to what would amount to trafficking. The definition encompasses in itself not only prostitution but also 'exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.' Further, on the issue of the consent of a person, it can be derived that children are excluded from within the purview so that a distinction could be made between consensual acts or treatment and those in which abduction, force, fraud, deception or coercion are used or threatened.

3. Obligations of the State Parties

27. Domestic and international responses to trafficking in persons, especially women and children, have adopted a three-pronged approach: prevention of trafficking, prosecution of traffickers, and protection and reintegration of victims.²⁴ Prosecution, prevention and protection (including human rights protection) must be the main pillars of an effective strategy to combat trafficking in human beings.²⁵ In their zeal to prosecute traffickers and protect the integrity of their borders, states must take care not to inadvertently violate the principle of doing no harm to trafficked persons, for example, by increasing the risk of exposure to abuse by third parties.²⁶ There is a clear need to ensure that the individuals falling victim to such criminal practices are protected.²⁷

²³ Article 3 (a) of the Protocol defines it as "recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

²⁴ See *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. Doc. A/53/383 (2000).

²⁵ See: Note by the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons. Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Eight Session, Vienna, 21 February - 3 March 2000 (A/AC.254/27)

²⁶ See: Human Rights Caucus. 1999. *Human Rights Standards for the Treatment of Trafficked Persons*. (www.wagner.inet.co.th/org/gaatw/smr99.htm)

²⁷ *Note by the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons*. Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Eight Session, Vienna, 21 February - 3 March 2000 (A/AC.254/27).

i. To Prevent Trafficking

28. The Protocol establishes that a state has an international obligation to prevent trafficking. The Protocol provides that “States Parties shall establish comprehensive policies, programmes and other measures: (a) to prevent and combat trafficking in persons...”²⁸ This should include measures “to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”²⁹ Further, the Protocol addresses the issue of demand, mandating states “to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”³⁰

29. In addition to the prevention of the act of trafficking, the Protocol calls upon States Parties to take the necessary measures to prevent “revictimization” of trafficked persons,³¹ which, as cases of trafficking demonstrate, poses a significant problem. Revictimization often occurs due to the lack of employment opportunities upon the victim’s return to home, as well as due to the difficulties faced by the victims in reintegrating into their communities. This could be addressed effectively, as the Protocol mandates, by adopting the necessary measures to counter the possibilities of the revictimization of victims rather than by simply prosecuting the traffickers.

30. The Protocol also requires that all States Parties take the necessary measures to prevent immigration for the purpose of engaging in trafficking in persons.³² It also mandates that States Parties “strengthen to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.”³³

ii. To Protect Victims of Trafficking

31. The key to human rights approach of combating trafficking in persons is the criminalization, or prosecution, of the traffickers on one hand, and the decriminalization, or protection, of the victim on the other. The convention read with the Protocol accentuates to have a victim-friendly oriented approach.³⁴ Such an approach successfully shifts the idea of criminalization away from the victims and toward the traffickers. While the Protocol calls for a crackdown on traffickers, it also stresses that victims of trafficking should be well protected because the victims are more in need of the assistance when they are repatriated to the country of origin. State Parties are obliged under the Protocol to:

- i. Providing legal aid and assistance to the victims by educating them regarding courts other proceedings which could be initiated against offenders besides ensuring victims' privacy;

²⁸ Article 9 (1)(a), the Protocol.

²⁹ Article 9 (4), the Protocol.

³⁰ Article 9 (5), the Protocol.

³¹ Article 9 (1)(b), the Protocol.

³² Article 11 (5), the Protocol.

³³ Article 11 (1), the Protocol.

³⁴ Article 14 (1) of the Protocol.

- ii. Give the child victims their basic rights like housing, education and care in governmental custody as enshrined in the Convention on the Rights of the Child;
- iii. Enable victims to seek compensation for damages, including fines, penalties or forfeited proceeds as well as restitution from offenders;
- iv. Consider immigration laws permitting victims of trafficking to remain on their territory, temporarily or permanently; and
- v. Accept and aid, without delay, the return of victims of trafficking who are nationals or residents of that nation;

32. Though the Protocol has been generally commended for its holistic approach, however, it has also received criticism in regards to the optional nature of provisions dealing with victim protection. This is reflected in the phrases such as “in appropriate cases” and “to the extent possible” used in articles 6 and 7 of the Protocol and articles 24 and 25 of the Convention.

iii. To Prosecute Traffickers

33. Parties to the Protocol have agreed to promulgate new laws to criminalize trafficking in persons, especially women and children, to ensure that offenders are punished. States also should plan to adopt new measures to expose traffickers, such as tightening borders through stricter identity checks, as well as inspecting and seizing vehicles. Additionally, the Protocol requires that the States Parties have the responsibility to enact legislation to recognize all forms of sexual exploitation as a crime, including trafficking for the purpose of pornography and mail order brides, among others. The states also have the responsibility to recognize trafficking in children for the purpose of illicit adoption as a form of trafficking in persons.

iv. International Co-operation

34. The convention deals with information exchange and training provision assuring that the traffickers would be subjected to stringent laws (like law enforcement and immigration laws).³⁵ This mandates the State Parties to cooperate so that they could keep a check on the individuals who crosses or attempts to cross the borders without travel documents or forged documents and to exchange the information regarding any suspected traffickers. They are also obliged to provide and strengthen trainings for law enforcement, immigration and other relevant officials.³⁶

v. Technical Assistance

35. The Convention contains few provisions on technical assistance in order to properly implement the Convention by the developing countries and economies in transition since once the resources available are brought to bear in establishing functional

³⁵ Article 10 of the Protocol.

³⁶ Article 11 (6) of the Protocol speaks of the obligation of the states to consider strengthening the cooperation among border control agencies.

systems against transnational organized crime, there will be inevitable gaps in capacity.³⁷ Therefore, to efficiently, effectively and substantially implement the technical assistance provisions of the Convention, the State Parties are required:-

- To assist one another in planning and implementing the research and training programmes for which they shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.
- To promote training and technical assistance in order *to facilitate extradition and mutual legal assistance*, which includes language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

36. During the studies undertaken by the Secretariat,³⁸ several reasons for non-compliance with their obligations were suggested, which include, (i) lack of financial and technical resources of States Parties; (ii) the confidentiality of the information involved; (iii) low priority given to some State Parties to the subject matter; (iv) lack of financial and technical resources of secretariats supporting treaty implementation bodies; (v) administrative and technical difficulties, personnel changes and language barriers in State Parties; (vi) the complex and cumbersome nature of formats used to collect information and (vii) lack of clarity on the relevance of requested information to treaty compliance. Several forms of assistance suggested for included legal assistance, specialized assistance and training in capacity building financial technical activities and research support and collection of information.

37. Further, assistance is required for the purpose of four offences established by the Convention, in particular, the offence of the participation in an organized criminal group; extradition and mutual legal assistance; and the provisions governing the confiscation, seizure and disposal of proceeds of crime or other property.

VII. CONSIDERATION OF ITEM DURING AALCO'S FORTY-FOURTH SESSION (NAIROBI, REPUBLIC OF KENYA, JUNE –JULY, 2005)

38. MR. MOTOKATSU WATANABE, the Deputy Secretary-General, AALCO, introduced the item on the topic, during the Forty-Fourth Session of AALCO³⁹ by stating that the report explored conceptual aspects and socio-economic reasons for trafficking as well as nature and scope of international obligations to prevent trafficking, protect victims of trafficking and prosecute perpetrators. Trafficking in persons, particularly women and children had been recognized by the international community as a human rights violation that was described as a contemporary form of slavery. Trafficking in persons for sexual

³⁷ On technical assistance see Article 29 and Article 30 for the implementation of the convention through economic development and technical assistance

³⁸ Second session of the Conference of Parties, Vienna, 10-12 October 2005 on Technical Assistance activities CTOC/COP/2005/1.

³⁹ Document No. AALCO/44/NAIROBI/2005/SD/S9

exploitation, forced labour, forced marriage and forced adoption was also the world's fast growing criminal business.

39. Further, he emphasized that as the problem is global in nature and many regions are severely affected, several regional and sub-regional initiatives are already underway and they are in operation at various levels. Thus, initiatives at the AALCO level may gain considerably when undertaken with the cooperation of other organizations.

40. Finally, for the purpose of drafting Model Legislation it was expected that the Member States come out with concrete suggestions reflecting their experiences and thus, requested and welcomed the Member States to give their comments on the outline of the proposed Model Legislation, which would facilitate the work of the Secretariat in preparing the draft articles of the Model Legislation.

41. Many delegates participated in the discussions on the topic and vehemently urged for the need to enact domestic legislation in their respective countries to prevent and combat trafficking in women and children along with the need to render international cooperation and technical assistance to curb this global evil. It is important because by trafficking the human dignity of the victim is at stake besides their human rights being violated. Therefore, it is immaterial if the crime does not occur in state of origin for as far as developing countries are concerned, especially Asian-African countries, the crime has a close connection because they can be either a state of transit or destination. Further, most of the delegates stressed the need to enact domestic legislation, which can regulate and make stringent laws in their countries to combat this issue.

VIII. OTHER INTERNATIONAL ORGANIZATIONS DEALING WITH “TRAFFICKING IN PERSONS”

1. Office of the High Commissioner for Human Rights (OHCHR)

42. In March 1999, the OHCHR established the position of an "adviser on trafficking" to the UNHCHR. The report⁴⁰ notes that the work of the OHCHR on this issue is based on two fundamental principles, that human rights must be at the core of any credible anti-trafficking strategy; and such strategies must be developed and implemented from the perspective of those who most need their human rights protected and promoted. Its five basic objectives were namely, (a) to enhance and ensure the capacity of the High Commissioner to provide policy guidance and leadership on the issue of trafficking; (b) to strengthen the capacity of the OHCHR and the UN human rights system to deal with the human rights dimensions of trafficking; (c) to ensure the integration of a human rights perspective into the anti-trafficking work of other UN agencies and programmes; (d) to raise awareness and knowledge of trafficking as a human rights issue throughout the UN system; and (e) to encourage external organizations to take up the issue of trafficking and apply a human rights perspective to trafficking in their policies and activities. The

⁴⁰ Report for the High Commissioner for Human Rights to the Economic and Social Council, UN ESCOR Substantive Sess. 2002, para 61, U. N. Doc. E/2002/68 (2002).

Commissioner's programme came out with Recommended Principles and Guidelines for Human Rights and Human Trafficking.⁴¹

2. International Labour Organization (ILO)

43. The ILO has addressed child trafficking⁴² through its Forced Labour Convention (No. 29). Since 1999, its efforts have been reinforced by the ILO Worst Forms of Child Labour Convention (No. 182). The latter confirms child trafficking as a practice similar to slavery that must be eliminated without delay. The ILO deals with action against trafficking of children through IPEC (InFocus Programme on Child Labour) and it works towards the effective elimination of trafficking of children by addressing its root causes based upon the UN Convention on the Rights of the Child and Convention No. 182. In collaboration with other international organizations, IPEC conducts action research on child trafficking; supports the efforts of governments, workers' and employers' organizations and civil society in the prevention of trafficking; in the rescue, repatriation and restoration of the rights of victims; and in strengthening the judiciary and police in prosecuting offenders.

3. United Nations Children's Fund (UNICEF)

44. UNICEF and ESCAP (Economic and Social Commission for Asia and the Pacific) proposed a project for the elimination of sexual abuse and sexual exploitation of children and youth in Asia and the Pacific in order to build the capacity of local governmental officials and NGOs. An East Asia and the Pacific Regional Consultation was held in Bangkok from 16 to 18 October 2001 titled "the Second World Congress against Commercial Sexual Exploitation of Children." It was organized by UNICEF, ESCAP, ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes), and the Government of Japan. Over 200 government leaders and representatives from UN agencies, civil society organizations and the private sector, as well as 30 young people representing the voices of the region's children and youth attended the meeting.

45. The meeting focused on reviewing regional progress in implementing the Stockholm Agenda for Action and on sharing 'good practices' in the areas of prevention, protection, recovery and reintegration, child participation, and coordination and cooperation in the fight against child sexual exploitation. The action plan addresses a wide range of issues, reflecting the diversity in the region. It also recognizes that child

⁴¹ There were 11 guidelines which are: (i) Promotion and protection of human rights, (ii) Identification of trafficked persons and traffickers, (iii) Research, analysis, evaluation and dissemination, (iv) Ensuring an adequate law enforcement response (v) Ensuring an adequate legal framework, (vi) Protection and support for trafficked persons, (vii) Preventing trafficking, (viii) Special measures for the protection and support of child victims of trafficking, (ix) Access to remedies, (x) Obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel and (xi) Cooperation and coordination between States and regions .

⁴² Convention No. 29 (1930) on forced labour, Convention No. 138 (1973) on the minimum age for admission to employment and associated Recommendation No. 146, Convention No. 182 (1999) on the worst forms of child labour and associated Recommendation No. 190.

sexual exploitation affects not only developing countries, but developed countries as well and that no country is untouched by this problem. While a great deal of work has been done in the region to help limit the sex trade in children, there is still a need to overcome the problem of demand which is large and growing in the Asia-Pacific region.

4. United Nations Development Programme (UNDP)

46. The UNDP's *Human Development Report 1999* has identified *trafficking of women and girls* as one of the criminal activities that had increased due to globalisation. The report states that the attention that the issue has attracted over the past two years has led to the introduction of concrete measures at the national, regional and international levels to confront the issue. The national measures to address trafficking in women and girls includes educational campaigns directed at potential victims; the establishment of national committees, task forces or plans of action to address the issue; training for front-line agencies on how to address trafficking in women and children, and the development of procedures in this context; projects on counseling, guidance and support of women affected by trafficking; protective measures such as repatriation and airport assistance, etc.

5. International Organization for Migration (IOM)

47. The International Organization for Migration (IOM) has also addressed trafficking in women and children for sexual exploitation in a number of reports and monographs. It had facilitated the February 2002 *Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime*. As a follow-up, IOM provides technical and logistical support to facilitate regional cooperation in the Bali Process. The process addresses trafficking and transnational crime by bringing together 40 participant countries in the Asia-Pacific region to improve regional cooperation and advance. It laid down three important aspects namely, (i) development of common legislative standards on trafficking, smuggling and mutual legal assistance, (ii) to set procedural standards and best practices for more effective law enforcement response and (iii) fostering of models for national government's responses to combating transnational crime. In addition to its role in the Bali Process, IOM Regional office at Bangkok contributes technical advice and support to regional mechanisms and forums that address trafficking.

IX. REGIONAL COOPERATION

48. There are few initiatives with reference to Asia on this issue. The South Asian Association for Regional Cooperation (SAARC) has drafted a convention on trafficking in women and children adopted in 2002; and in 2001 a decision has been taken by the Association of South-East Asia Nations (ASEAN) to make the fight against trafficking in women a priority;⁴³ the UN Economic and Social Commission for Asia and the Pacific

⁴³ Three ASEAN Bodies are involved in pursuing initiatives against trafficking in women and children: the ASEAN Ministerial Meeting on Transnational Crime (AMMTC), the ASEAN Chiefs of National Police (ASEANPOL) and the Sub-Committee on Women (ASW).

(ESCAP) has initiated a seminar on using legal instruments to combat trafficking in women and children.

49. Concerning inter-American regional organizations, the initiatives by the Inter-American Commission of Women and the Inter-American Children's Institute (both specialized agencies of the Organization of American States) is noteworthy. The European regional organizations (the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe [OSCE]) and their initiatives as: the establishment of the Task Force on Trafficking, focuses on awareness training, training and exchange programmes, law enforcement cooperation, victim protection programmes, return and reintegration assistance, relevant legislative reform, and prevention; the adoption by the OSCE, in 2001, of a set of anti-trafficking guidelines and a code of conduct for field personnel etc. stand significant.

1. SAARC Convention on Trafficking In Persons

50. The SAARC Convention on preventing and combating Trafficking in women and children for Prostitution was adopted in January 2002. During the Ninth SAARC Meeting in Male, Maldives, the issue of trafficking was addressed and it was decided that a Regional Convention for Prostitution might be adopted in order to put an end to women's rights violations.⁴⁴ This convention emphasizes that trafficking in women and children⁴⁵ for the purpose of prostitution is incompatible with the dignity and honour of human being and therefore is a violation of basic human rights.⁴⁶ The purpose of the convention is to promote cooperation amongst Member States in order to deal with various aspects of prevention, interdiction and suppression of trafficking in women and children, the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.⁴⁷ There were suggestions to amend the SAARC Convention by widening the ambit of definition of trafficking in persons so as to include 'procurement, transportation, forced movement' of the women and children too.

2. Bali Process

51. The Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational crime was held in Bali, Indonesia from 27-28 February 2002

⁴⁴ Article 27 of the Male Declaration, Ninth SAARC Summit, Male, Maldives, may 1997. It reads thus, "27. Expressing grave concern at the trafficking of women and children within and between countries, the Heads of State or Government pledged to coordinate their efforts and take effective measures to address this problem. They decided that existing legislation in Member States should be strengthened and strictly enforced. This should include simplification of repatriation procedures for victims of trafficking. They also decided that the feasibility of establishing a Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution be examined by the relevant Technical Committee."

⁴⁵ Article 1 (4) of the SAARC Convention defines trafficking as "moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking".

⁴⁶ Paragraph 1 of the Preamble to the SAARC Convention.

⁴⁷ Article II of the SAARC Convention.

(the Bali Conference). The conference set out to establish a foundation for coordinated regional action to reduce the transnational crimes of people smuggling and trafficking in persons, and to address challenges presented by unregulated migration and the impact that it has on society. In order to meet this objective, "Ad Hoc Experts' Groups" were formed with mandates to establish an operational framework or 'mechanism' through which concrete initiatives could be undertaken to develop and strengthen regional anti-smuggling, anti-trafficking and related legislation; to improve regional cooperation in law enforcement, information and intelligence exchange; to strengthen national capacities to reduce smuggling and trafficking and related transnational crimes.

52. In the following year, 2003, at the Second Bali Ministerial conference, Ministers agreed to the following specific objectives for the Bali process:

- the development of more effective information and intelligence sharing;
- improved cooperation among regional law enforcement agencies to deter and combat people smuggling and trafficking networks;
- enhanced cooperation on border and visa systems to detect and prevent illegal movements;
- increased public awareness in order to discourage these activities and warn those susceptible;
- enhanced effectiveness of return as a strategy to deter people smuggling and trafficking through conclusion of appropriate arrangements;
- cooperation in verifying the identity and nationality of illegal migrants and trafficking victims;
- the enactment of national legislation to criminalise people smuggling and trafficking in persons;
- provision of appropriate protection and assistance to the victims of trafficking, particularly women and children;
- enhanced focus on tackling the root causes of illegal migration, including by increasing opportunities for legal migration between states; and
- assisting countries to adopt best practices in asylum management, in accordance with the principles of the 1951 Refugees Convention.

53. To take forward these objectives, Ministers agreed that senior officials develop practical plans of action. New Zealand has coordinated activities to increase regional and international cooperation and Thailand has coordinated work on legislation, law enforcement and document fraud issues. Overall direction and coordination has been provided through an officials' level steering group comprising Indonesia and Australia as the two co-chairs, New Zealand and Thailand as the coordinators and the Office of the United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM) as partner agencies. The IOM also administers the process.

54. The Australian Government created the position of Ambassador for People Smuggling Issues in April 2002 to take forward the outcomes of the first Ministerial Conference and promote coherent, effective international approaches to combating

people smuggling and trafficking, particularly in the Asia Pacific region. It is pertinent to note that out of the 38 source, transit and the receiving (destination) countries, **nineteen states**⁴⁸ which participated for the Bali process are Member States of AALCO as well. It is interesting to note that Australia and New Zealand, who had played a significant role in initiating the Bali Process along with Indonesia, are the Permanent Observers of AALCO.

X. RECENT DEVELOPMENTS

1. SECOND SESSION OF THE CONFERENCE OF PARTIES TO UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, VIENNA, 10-21 OCTOBER 2005.

Second session of the Conference of the Parties (COP)

55. The Second Conference of Parties (COP-2) to the Convention Against Transnational Organized Crime was held in Vienna, Austria from 10-21 October 2005. The Conference of the Parties focussed on two main objectives:

1. To improve the capacity of States Parties to combat transnational organized crime
2. To promote and review the implementation of the Convention and its Protocols.

56. To achieve this, the COP is expected to agree on mechanisms to:

- Facilitate training and technical assistance;
- Enable the exchange of information on patterns and trends in transnational organized Crime and on ways to combat them;
- Foster cooperation between intergovernmental and non-governmental organizations;
- Review periodically the implementation of the Convention and its Protocols;
- Make recommendations to improve the Convention and its Protocols and their implementation.

57. The provisional agenda for the second session of the COP was prepared by the Secretariat the Chairmen of the regional groups, the Chairman of the Group of 77 and China and the Presidency of the European Union. The provisional agenda, which dealt

⁴⁸ Bangladesh, Bhutan, Brunei Darussalam, People's Republic of China, India, Indonesia, Iran, Japan, Malaysia, Mongolia, Myanmar, Nepal, North Korea, Pakistan, Philippines, Singapore, South Korea, Sri Lanka and Thailand.

with, the Convention and the Trafficking in Persons Protocol in particular, provided, *inter alia*,⁴⁹ on:

1. Organizational matters, like opening of the second session of the COP to the Convention, Election of Officers, adoption of the agenda and organization of work, participation of the observers, adoption of the report of the bureau on credentials;
2. Review of the implementation of the United Nations Convention on the Transnational Organized Crime, through (i) consideration of the basic adaptation of the national legislation in accordance with the Convention; (ii) commencement of the examination of criminalization legislation and difficulties encountered in the implementation of the relevant provisions of the convention in accordance with its Article 34, paragraph 2; (iii) Enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Convention.
3. Review of the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, by (i) consideration of the basic adaptation of the national legislation in accordance with the Trafficking in Persons Protocol; (ii) commencement of the examination of criminalization legislation and difficulties encountered in the implementation of Article 5 of the Trafficking in Persons Protocol; (iii) enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Trafficking in Persons Protocol; (iv) Exchange of views and experience regarding the protection of victims and preventive measures, gained primarily in the implementation of articles 6 and 9 of the Trafficking in Persons Protocol including the awareness-raising.

58. One of the major attempts of the Conference was to endorse the questionnaire on the implementation of the Convention⁵⁰ and its three Protocols.⁵¹ The questionnaires⁵²

⁴⁹ Other Protocols also were taken up as a provisional agenda item. Review of the implementation of the Protocol against Smuggling of Migrants by Land, Sea and Air; Other matters; Technical assistance activities; Consideration of mechanisms for achieving the objectives of the Conference of the Parties in accordance with article 32, paragraphs 3-5, of the Convention; Consideration of notification requirements in accordance with the relevant articles of the Convention (art. 5, para. 3; art. 6, para. 2 (d); art. 13, para. 5; art. 16, para. 5 (a); art. 18, paras. 13 and 14; and art. 31, para. 6) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (art. 8); Provisional agenda for the third session of the Conference of the Parties; Adoption of the report of the Conference of the Parties on its second session.

⁵⁰ *States parties which responded to the questionnaires were:* Afghanistan, Algeria, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Brazil, Canada, China, Costa Rica, Croatia, Cyprus, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Honduras, Jamaica, Latvia, Libyan Arab Jamahiriya, Lithuania, Malaysia, Malta, Mauritius, Mexico, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Nigeria, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine and Uzbekistan.

⁵¹ Responses to the questionnaire on the implementation of the Trafficking in Persons Protocol were received from the following Member States: Azerbaijan, Bahrain, Belarus, Belgium, Brazil, Canada, Chile,

were circulated among the State Parties (as per the decision 1/3 of the COP-1)⁵³ with a view to obtain the information regarding the adaptation of the national legislation, among other things. Further, the United Nations General Assembly in its sixtieth session⁵⁴ stated that the UNODC shall be ably functioning if it assist the State Parties to implement the convention and its protocol, support the ratification, assist states by giving legal expertise in preparing tools and model legislation; capacity building in terms of prevention and control of the transnational organized crime and corruption.

59. The Session was opened by the outgoing president of the first session, Amb. Garcia III of the Philippines. Amb. Peter Poptchev of Bulgaria was elected the new President of the Second Session along with eight vice presidents and the rapporteur.⁵⁵ National Statements were made by India (on behalf of G 77 and China), Ethiopia (on behalf of African Group), Philippines (on Behalf of Pacific Group), United Kingdom (on behalf of EU and candidates), Ukraine (on behalf of the GUUAM states) and Mexico (on behalf of Group of Latin American and Caribbean States). The national statement was followed by the Opening Statement of the Executive Director of the United Nations Office on Drugs and Crime (UNODC) who accentuated that the organized crime was a global evil which depends on the interplay of economic incentives, social vulnerability and inadequate rule of law. Therefore, in order to strengthen law each State Parties must ratify the convention and its protocol and implement the same by adopting national legislation. Further, stressed on the need to send questionnaire to member countries.

60. During the session many delegations gave account of how they had amended their domestic penal code to meet the requirements of the Convention.⁵⁶ On the Protocol on Trafficking in Persons, few countries had made their statements regarding their measures to combat trafficking, which include Japan,⁵⁷ Lebanon, Brazil, South Africa, Oman, Belgium, Netherlands, USA and Russia.⁵⁸

Costa Rica, Croatia, Cyprus, Ecuador, El Salvador, Estonia, France, Jamaica, Latvia, Lithuania, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, New Zealand, Nigeria, Peru, Philippines, Poland, Portugal, Russian Federation, Romania, Slovakia, South Africa, Spain, Sweden, Tunisia and Turkey;

Responses to the questionnaire on the implementation of the Migrants Protocol were received from the following Member States: Azerbaijan, Bahrain, Belarus, Belgium, Brazil, Canada, Costa Rica, Croatia, Cyprus, El Salvador, Estonia, France, Guatemala, Jamaica, Latvia, Lithuania, Malta, Mexico, Myanmar, Namibia, Netherlands, New Zealand, Nigeria, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Tunisia and Turkey.

⁵² The questionnaire on the implementation of the Convention – CTOC/COP/2004/L.1/Add.2 and for the questionnaire on the implementation of the Protocol on Trafficking in persons – CTOC/COP/2004/L.1/Add.1.

⁵³ CTOC/COP/2004/L.1/Add.3).

⁵⁴ A/60/430 on Implementation of Decisions from the 2005 World Summit Outcome for action by the Secretary-General.

⁵⁵ Eight vice presidents belonged to Brazil, Burkina Faso, China, Croatia, Mexico, New Zealand, Nigeria and Spain and the rapporteur belongs to Oman.

⁵⁶ USA, Canada, Brazil, Algeria and Japan made the statements.

⁵⁷ Japan stressed that they have been able to strengthen immigration control, especially against so-called 'entertainers.'

⁵⁸ CTOC/COP/2005/3.

61. The Third session of the Conference of Parties proposed to be in 2006 is proposed to focus on consideration of the implementation of the following provisions on Extradition (Article 16), Transfer of sentenced persons (Article 17), Mutual legal assistance (Article 18), International cooperation for purposes of confiscation (Article 18), Disposal of confiscated proceeds of crime or property (Article 14), Joint investigations (Article 19), Special investigative techniques (Article 20), Transfer of criminal proceedings (Article 21), Law enforcement cooperation (Article 27) and jurisdiction (Article 15). An amendment to rule 22 (Election) of the rules of procedure for the Conference of Parties to the United Nations Convention against transnational Organized Crime was deferred to the third session of the Conference of Parties.

62. Finally, the Conference of the Parties adopted the draft provisional agenda and proposed organization of work for the second session of the Conference of the Parties.⁵⁹

2. ELEVENTH UN CONGRESS ON CRIME PREVENTION AND CRIMINAL JUSTICE,⁶⁰ BANGKOK, 18-25 APRIL 2005.

63. The main theme of the Eleventh Congress was “*Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice*,” as decided by the United Nations General Assembly in resolution 57/170 of 18 December 2002. The Government of Thailand, at Bangkok, hosted eleventh UN Congress from 18 to 25 April 2005. There were 2,370 participants in the Congress, including many Ministers of Justice and other high-level officials, as well as representatives from 167 non-governmental organizations and 1,135 individual expert observers.

64. There were five substantive items and six technical workshops on the agenda of the Congress. The substantive items were;

- Effective measures to combat transnational organized crime;
- International cooperation against terrorism and links between terrorism and other criminal activities in the context of the work of the United Nations *Office on Drugs and Crime* (UNODC);
- Corruption: threats and trends in the twenty-first century;
- Economic and financial crimes: challenges to sustainable development;
- Making standards work: fifty years of standard setting in crime prevention and criminal justice.

⁵⁹ CTOC/COP/2005/1.

⁶⁰ The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in 1955, was attended by 61 countries and territories, and had over 500 participants, while the Tenth Congress, held in 2000, was attended by 137 Governments and had approximately 2,000 participants. The United Nations Crime Prevention Congresses have been held every five years since 1955, when the first Congress took place in Geneva, Switzerland. Their overall goal is to promote more effective crime prevention policies and criminal justice measures all over the world. Crime Congresses have taken place in different parts of the world, namely: 1960: London, UK; 1965: Stockholm, Sweden; 1970: Kyoto, Japan; 1975: Geneva, Switzerland; 1980: Caracas, Venezuela; 1985: Milan, Italy; 1990: Havana, Cuba; 1995: Cairo, Egypt; 2000: Vienna, Austria.

The technical workshops were held on the following subjects:

1. Enhancing international law enforcement cooperation, including extradition measures;
2. Enhancing criminal justice reform, including restorative justice;
3. Strategies and best practices for crime prevention, in particular in relation to urban crime and youth at risk;
4. Measures to combat terrorism, with reference to the relevant international conventions and protocols;
5. Measures to combat economic crime, including money-laundering;
6. Measures to combat computer-related crime.

65. A **High-level Segment** was held during the last three days of the Congress, from 23 to 25 April 2005, where Heads of State or Government, Ministers and other high-level government representatives addressed the main agenda items of the Congress. Consistent with the recommendations repeatedly made by the General Assembly, UNODC and the Office of Legal Affairs of the United Nations offered the States the opportunity to undertake treaty actions during the High-level Segment (deposit instruments of ratification, acceptance, approval or accession) with regard to the United Nations Convention against Transnational Organized Crime and its three Protocols, as well as the four multilateral instruments against terrorism deposited with the Secretary-General.

66. Antonio Maria Costa, Executive Director of the UNODC and Director-General of the United Nations Office at Vienna, made a remark 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.”

67. The United Nations Commission on Crime Prevention and Criminal Justice, the preparatory body for the Congress, has been tasked by the General Assembly to prepare the text of a draft declaration for submission to the Eleventh Congress, taking into account the recommendations of the regional preparatory meetings, held in early 2004 in Addis Ababa, Bangkok, San José and Beirut. The Congress adopted single declaration “Draft Bangkok Declaration Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice”, which contains major recommendations that originated from discussions at the regional preparatory meetings of the Congress.

68. The Eleventh United Nations Congress on Crime prevention and Criminal Justice adopted the Bangkok Declaration for emphasizing on the increase in the transnational organized crime and transnational criminal organizations, for example, terrorism (which includes cyber terrorism and other related crimes apart from the traditional form of terrorism) and any existing links between them. It addresses those matters, besides issues such as trafficking in human beings, money laundering, corruption, “cyber crime”, restorative justice, and the root causes of crime. According to the Declaration, Member States have to reaffirm their readiness to seek to improve international cooperation in the

fight against crime and terrorism at the multilateral, regional and bilateral levels, in areas including extradition and mutual legal assistance. They also sought to ensure national capacity to engage in international cooperation, in particular in the prevention, investigation, prosecution and adjudication of transnational organized crime and terrorism and in discovering any existing links between them.

69. It called upon all States, which had not yet ratified and implemented the Convention and its three protocols, to do it at the earliest along with the *universal instruments against terrorism*⁶¹ and *United Nations Convention against Corruption*.⁶² It further called upon all the donor States and financial institutions to continue to make adequate voluntary contributions for the provision of technical assistance, to developing countries and countries with economies in transition, for facilitating them for capacity building to prevent and tackle crime, to apply the United Nations standards and norms in crime prevention and criminal justice and implement the aforementioned conventions and the international drug control conventions. On the aspect of international cooperation, States are pledged to cooperate in order to create an environment conducive to the fight against crime, including by promoting growth and sustainable development and eradicating poverty and unemployment.

70. The Congress recommended that the Commission on Crime Prevention and Criminal Justice give consideration (i) to review the adequacy of standards and norms in relation to prison management and prisoners, (ii) to promote the interests of victims and (iii) the rehabilitation of offenders, (iv) emphasis on developing restorative justice policies, including alternatives to prosecution.

71. The Declaration also addressed matters such as the theft and trafficking of *cultural property* and *illicit trafficking in protected species of wild flora and fauna*. It noted with concern the rise of kidnapping and trafficking in persons, often committed with the objective of funding criminal organizations and terrorist activities. Apart from measures to combat those crimes, there was also a need for measures to provide adequate assistance and protection to their victims and their families. It also noted the concerns raised regarding the illicit removal of and trafficking in human organs.

72. The Declaration reaffirmed the fundamental importance of implementation of existing instruments and the further development of national measures and international cooperation in criminal matters, in issues such as cyber crime, money-laundering,

⁶¹ The United Nations Office on Drugs and Crime in coordination with the Security Council's counter-Terrorism Committee, support States to become party to and implement those instruments and to comply with relevant Security Council resolutions against terrorism. It expressed the hope that the ongoing negotiation of a draft comprehensive convention on international terrorism would be concluded as soon as possible and recognized that arriving at a possible definition of terrorism was one of the key issues to be resolved. The Declaration recognized the need to strengthen the legal and financial framework for providing support to such victims.

⁶² In order to curb corruption, it recognized the need to promote a culture of integrity and accountability in both the public and the private sector. It also emphasized the need to adopt measures to facilitate asset recovery, consistent with the principles of that Convention.

trafficking in cultural property, extradition, mutual legal assistance and the confiscation, recovery and return of the proceeds of crime.

XI. GENERAL COMMENTS

73. These initiatives by the international community have been one of the major achievements on the protection of women and children, especially to curb trafficking, sexual exploitation, forced prostitution, etc. The Convention read along with the Trafficking in persons Protocol gives a clear intention on the part of the states, in particular those states, which are states of origin, transit or destination of the trafficking as to how to deal with this issue. The success of these initiatives lies in implementation of the Convention in reducing this global evil. A perusal of the regional efforts in addressing these issues reveals that the measures have been taken to eliminate them completely in their own regions. Another aspect, which is pertinent to note, is, how this issue have been brought within the purview of human rights. Few international organizations have conducted an in-depth study to suggest the means and methods of eliminating the issue. Terms like women's human rights, sexual and reproductive rights of the women, right to privacy, right to live with human dignity etc., have been interpreted and broadened to afford full protection to women and children.

74. Notwithstanding these positive developments, there are various hindrances that remain the basic feature of the trafficking menace, prominent being 'where to stop' trafficking, in spite of the existing laws be it international law or national law. The measures should begin from the individuals, society and then the state. Therefore, states have a major role to educate their citizens in terms of affording protection to women and children apart from enacting strict domestic legislations against trafficking. Also, states should take measures to rehabilitate the victims by assuring them basic amenities of life and restoring their dignity. It is necessary to bear in mind that trafficking in persons, especially women and children, will not be weeded out without a long-term address to the underlying causes for trafficking in persons – extreme poverty and severe lack of economic opportunities in home countries, inequality of women and absence of adequate state support on one hand and inability to migrate legally from deprived to prosperous countries (while in reality there is a demand for foreign labour in developed countries). Long-term development and poverty reduction strategies together with human rights, democracy and women empowerment promotion must be a part of any approach and solution devised to combat the growing menace of trafficking in persons as well as approaches to the question of migration and the rights of migrants.

75. As noted above that the existing international legal framework is inadequate and narrow. Thus, it is averred that 'to successfully combat trafficking in persons we need to take a three-pronged approach involving prevention of trafficking, prosecution of traffickers and protection of human rights of trafficked persons.'⁶³ It is further argued that

⁶³ Elaine Pearson, Trafficking Programme Officer, Anti-Slavery International, *"The Need for effective Witness Protection in the Prosecution of Traffickers: A Human Rights Framework for Witness Protection"* Paper presented at the First Pan-African Regional Conference on Trafficking In Persons, Abuja, Nigeria, 19-23 February 2001. <http://www.antislavery.org/archive/other/witnessprotection.pdf>

any efforts to understand and analyze the problem of trafficking would remain incomplete if it is approached from the point of view of prevention of crimes only. Thus it is felt that human rights approach should remain the *sine qua non* of any mechanism against trafficking in persons. The existing international legal framework is also critiqued on similar lines including the UN Trafficking Protocol and the UN Convention against Transnational Organized Crime. Therefore, it is necessary that any approach should equally focus on the effects on the victims of trafficking and their rights as reflected in various human rights and other instruments under international law. Recent 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' of the Office of the United Nations High Commissioner for Human Rights are of significant importance in this direction.

76. Historically, trafficking has often been understood as movement only for commercial sexual purposes, and has thus not been comprehensively dealt with in law as was evidenced in the early international legal instruments. Accordingly in many countries, the problem of trafficking is addressed through prostitution laws, which seek variously to criminalize, regulate or control the sex industry and sex trade. In this regard there is clearly an urgent need for countries to review laws that do not take account of a comprehensive understanding of trafficking as reflected in the Protocol against Trafficking in Persons and to ensure that adequate protection in law is provided. Further, it is not enough to enact legislation that makes trafficking in persons a serious crime, without complementing it with effective law enforcement mechanisms. Without effective law enforcement and prosecutions of traffickers, they would continue their criminal activities unhindered. Therefore, it is desired that effective enforcement mechanisms as well as integrated legal frameworks should be developed through international co-operation. Also, by providing technical assistance to the developing countries and economies in transition there can be proper implementation since they are the most affected states and lack resources in terms of according protection to the victims. Therefore, it becomes obligation of the developed countries to take measures to facilitate these countries to implement this Convention and its Protocols.

77. What is most often overlooked in regard to successful enforcement of even the best pieces of legislation is that not only must the law itself be changed to impose liability on traffickers and on patrons of places where trafficked victims may be forced into prostitution; but more importantly, to reform the functional equivalent of the law, that is, the customs, the traditions, and acceptable behaviour. Countries that tolerate, accommodate, or normalize prostitution should review their policies and inquire whether such tolerance, accommodation or normalization contributes to the rising numbers of trafficking victims. It is also relevant to recognize the significance of addressing traditional systems that may play a part in the trafficking infrastructure, for sexual exploitation as well as for forced labour.

78. The Convention addresses and requires States Parties to adopt effective measures to promote integrity and prevent, detect and punish the corruption of public officials.⁶⁴ Although there have been some cases of prosecution of public officials for their

⁶⁴ Articles 8 and 9 of the Convention against Transnational Organised Crime.

involvement in trafficking, many states are still unwilling to expose and punish corrupt public officials. In many countries, corruption is rampant and continues to remain a major contributor to the trafficking infrastructure. Therefore, the issue of trafficking in persons should be addressed in the larger context in light of the existing obligations of States under the various regimes of international law and human rights law.

79. It is encouraging to note that most of the AALCO Member States are already Parties to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) as well as the Convention on the Rights of the Child (CRC). These measures could facilitate in addressing these issues effectively and systematically. Communications received by the AALCO Secretariat from Member States in respect of national legislations show that even though many countries do not have anti-trafficking legislations per se, however, there are provisions in their other domestic laws to deal with the offence of trafficking in women and children. An early ratification of the Convention and its Protocols specially the Protocol to Prevent, Suppress and Punish Trafficking in persons especially Women and Children would go a long way in dealing with the crime of trafficking.

80. A significant step towards protection against trafficking in women and children could be the formulation of model legislation, reflecting the dispositions of International instruments, a proposal that was supported during the Fortieth session of AALCO. Further, the discussions held during the Special Meeting on 'Establishing Cooperation against Trafficking in Persons, especially Women and Children' in Bali during the Forty-third Session, many delegations reiterated the importance of having a model legislation on the said subject, particularly they emphasized the need of having a common definition for the 'crime of trafficking in persons'. The preparation of model legislation may also facilitate consideration by Member States of becoming parties to the Convention and its Protocols. This task could be accomplished with the technical assistance and effective co-operation from the IOM and OHCHR with whom a Cooperation Agreement and Memorandum of Understanding were signed in the years 2000 and 2001 respectively. In this connection, Member States may be requested to communicate to the Secretariat their national legislation relating to preventing and combating the crime of trafficking in women and children as well as protecting victims.

81. It is important to highlight here that the Bali Process has taken many concrete activities to curb the menace of trafficking in the Asia-Pacific regions. Model legislation developed by Australia and China has assisted participant countries draft their own domestic laws criminalizing people smuggling and trafficking in persons. 18 regional countries have made use of the model legislation and 19 now have legislation in place. It would be useful to study this legislation carefully and while undertaking the drafting of a model legislation by AALCO for its Member States, care should be taken so as not to duplicate the work and to identify the issues that have not been dealt with in that model legislation but are highly relevant to tackle the issue of trafficking in persons especially women and

children from various dimensions. Further, seventeen Member States of AALCO had given their national legislations to study them and utilize them for drafting the Model Legislation by AALCO.

82. The Forty-Fifth Session of AALCO would provide a good opportunity for Member States to deliberate upon various issues involved and find ways and means in tackling the issue and establish an effective cooperation among Member States against trafficking in women and children and to approve the guideline drawn up for formulating the model law.

ANNEX I

AALCO MEMBER STATES PARTIES TO THE CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Country	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a)	Member States that have sent their national legislations
Arab Republic of Egypt	13 December 2000	05 March 2004	24 May 2002
Bahrain		7 Jun 2004 a	
Botswana	10 April 2002	29 Aug 2002	
China	12 December 2000	23 Sep 2003	5 November 2004
Cyprus	12 December 2000	22 April 2003	24 May 2002
Gambia	14 December 2000	05 May 2003	
Ghana			18 November 2004
India	12 December 2002		
Indonesia	12 December 2000		
Iran (Islamic Republic of)	12 December 2000		
Japan	12 December 2000		15 January 2002
Jordan	26 November 2002		
Kenya		16 June 2004 a	
Kuwait	12 December 2000		31 December 2004
Lebanon	18 December 2001	5 Oct 2005	8 March 2002
Libyan Arab Jamahiriya	13 November 2001	18 Jun 2004	
Malaysia	26 September 2002	24 Sep 2004	1 November 2004
Mauritius	12 December 2000	21 April 2003	25 November 2004
Myanmar		30 March 2004 a	2 April 2002
Nepal	12 December 2002		6 March 2002
Nigeria	13 December 2000	28 June 2001	
Oman		13 May 2005	16 December 2001
Pakistan	14 December 2000		
Philippines	14 December 2000	28 May 2002	7 October 2004
Qatar			1 December 2004
Republic of Korea	13 December 2000		12 October 2004
Saudi Arabia	12 December 2000	18 Jan 2005	
Senegal	13 December 2000	27 Oct 2003	

Sierra Leone	27 November 2001		
Singapore	13 December 2000		20 December 2001
South Africa	14 December 2000	20 Feb 2004	
Sri Lanka	13 December 2000		
Sudan	15 December 2000	10 Dec 2004	22 December 2004
Syrian Arab Republic	13 December 2000		6 May 2002
Thailand	13 December 2000		
Turkey	13 December 2000	25 March 2003	
Uganda	12 December 2000	9 March 2005	
United Arab Emirates	09 December 2002		7 February 2002
United Republic of Tanzania	13 December 2000		
Yemen	15 December 2000		

ANNEX II

AALCO MEMBER STATES PARTIES TO THE PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

Country	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a)
Bahrain		7 Jun 2004 a
Botswana	10 April 2002	29 August 2002
China		
Cyprus	12 December 2000	06 August 2003
Egypt	01 May 2002	05 March 2004
Gambia	14 December 2000	05 May 2003
India	12 December 2002	
Indonesia	12 December 2000	
Iran (Islamic Republic of)		
Japan	09 December 2002	
Kenya		5 Jan 2005 a
Kuwait		
Lebanon	09 December 2002	05 October 2005
Libyan Arab Jamahiriya	13 November 2001	24 Sep 2004
Mauritius		24 September 2003 a
Myanmar		30 March 2004 a
Nigeria	13 December 2000	28 June 2001
Oman		13 May 2005 a
Pakistan		
Philippines	14 December 2000	28 May 2002
Republic of Korea	13 December 2000	
Saudi Arabia	10 December 2002	
Senegal	13 December 2000	27 October 2003
Sierra Leone	27 November 2001	
Singapore		
South Africa	14 December 2000	20 February 2004
Sri Lanka	13 December 2000	
Sudan		
Syrian Arab Republic	13 December 2000	
Thailand	18 December 2001	
Turkey	13 December 2000	25 March 2003

Uganda	12 December 2000	
United Republic of Tanzania	13 December 2000	
Yemen		

ANNEX III

LIST OF AALCO MEMBER STATES THAT RESPONDED TO THE QUESTIONNAIRES⁶⁵ ON THE IMPLEMENTATION OF

THE CONVENTION	THE TRAFFICKING IN PERSONS PROTOCOL
(i) Bahrain, (ii) China, (iii) Cyprus, (iv) Egypt, (v) Libyan Arab Jamahiriya, (vi) Malaysia, (vii) Mauritius, (viii) Myanmar, (ix) Nigeria, (x) Philippines, (xi) South Africa and (xii) Turkey.	(i) Bahrain, (ii) Cyprus, (iii) Mauritius, (iv) Myanmar, (v) Nigeria, (vi) Philippines, (vii) South Africa and (viii) Turkey.

⁶⁵ Questionnaire Circulated To Member States of the United Nations as per Decision 1/2 of the COP-1 of the UN Convention Against Transnational Organized Crime and it's Trafficking in Persons Protocol.