

**IX. SUMMARY RECORD OF THE FIRST HALF-DAY SPECIAL MEETING ON
'TRANSNATIONAL MIGRATION – TRAFFICKING IN PERSONS AND SMUGGLING
OF MIGRANTS' JOINTLY ORGANIZED BY AALCO – THE GOVERNMENT OF
MALAYSIA, HELD ON WEDNESDAY, 19TH AUGUST 2009, AT 9.30 AM.**

His Excellency Tan Sri Abdul Gani Patail, President of the Forty-Eighth Session of AALCO in the Chair.

1. The **President** while introducing the topic for the Special Meeting on “Transnational Migration – Trafficking in Persons and Smuggling of Migrants”, stated that it was a topical issue for focused discussion and was a natural choice for the Forty-Eighth session of AALCO. Asian-African States were under the microscope for their lack or insufficient action to deter those offences and to protect trafficked persons. He said there was only need to review the tier classifications accorded to Asian-African States in the United States Annual Trafficking in Persons Reports to see how the Asian-African States are viewed by others.
2. The undeniable fact remained that no AALCO Member State could claim to be untouched by the problems associated with transnational migration of the peoples from Asia and Africa. Economic difficulties, war and internal strife drove able-bodied human beings – men, women and children – to seek better lives in foreign countries. In the course of their earnest attempts to “live the dream”, those people were exploited. In worst case scenarios, they were driven to modern day slavery and death.
3. He said that Malaysia was well aware of the problems; it had been classified into the tier three. One of the reasons was that it lacked in enforcement side though it had very good laws in place. Enforcement must be scrutinized seen and done in most of the countries in Asia and Africa, including Malaysia especially could not deny the fact that they relied on the American classification. Howsoever, it was undeniable that the States in these two regions were dependent on them for trade and the result was that when they were put in tier, sanctions could be imposed against countries after a 90-day period. But at the end of the day, the fear of trade sanctions remained in every State.
4. He further stated that great inroads were achieved through the elaboration of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the UN Protocol against Smuggling of Migrants by Land, Sea and Air. These legally binding instruments created for the first time a legal distinction between trafficking in persons and people smuggling. These Protocols also established the *de facto* standard of the constituent elements of the offences. The key differential between the two offences was exploitation. If there was exploitation – be it sexual or labour or otherwise – a trafficking offence was committed. Further, by becoming parties to them, States undertook to uniformly criminalize those offences under their domestic law as well as put in place the necessary protective mechanisms for the trafficked and smuggled persons.
5. However, the enactment of comprehensive laws which adhered to these international standards were no longer sufficient. Concerted action on the ground was required if States were to overcome this transnational problem. Only concerted arrest and prosecution of traffickers and

smugglers; and forfeiture of their proceeds would ultimately deter those offences from being committed on territories of States in Asia and Africa. In order to do this, there was also need for cooperation of the victims; not their prosecution and further victimization of such persons.

6. In addition, the key to resolving the challenges arising from the transnational nature of those offences was coordination and cooperation between and among the law enforcement agencies of the affected countries, be they source, transit or destination countries. It would also require the full and effective use of all tools at the disposal of law enforcement agencies including extradition and mutual assistance in criminal matters.

7. It should not be forgotten that those offences constituted breaches of the human rights of the victims. Human rights instruments such as the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of Child (CRC) which impose express obligations on States Parties to criminalize and prosecute trafficking of women and children. Such offences also transgressed international labour instruments such as the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

8. Aside from prosecuting traffickers and smugglers, much still remained to be done to safeguard the well-being of the trafficked person or smuggled migrant. Current wisdom emphasized the need for protection and shelter to keep them away from the tentacles of the traffickers and smugglers. Counseling and rehabilitation were advocated pending repatriation to their home countries to promote effective re-integration into their home communities and discourage re-victimisation. Such humanitarian measures resonated well with certain countries but would prove unduly burdensome to others. Therefore, a balance must be achieved with each link in the chain playing its part responsibly.

9. Given the national security and economic repercussions of this current issue, he believed it would garner a lot of interest and discussion among all delegations. They could learn from each other and would mutually benefit from the sharing of experiences in overcoming the inherent challenges in combating those transnational migration issues.

10. Last but not the least, he hoped that the discussion would engender cooperative and collaborative practical measures that AALCO Member States could undertake to combat the twin menaces to legitimate international travel and commerce.

11. **Prof. Dr. Rahmat Bin Mohamad, Secretary-General of AALCO** said that AALCO had been constantly making efforts to legally enable its Member States about the issues involved in those crimes. In this regard, he highlighted that AALCO had since 2001 dealt with the issue of “Establishing Cooperation against Trafficking in Human Beings, especially Women and Children” upon introduction of the item by the Government of the Republic of Indonesia as well as “The Legal Protection of Migrant Workers” upon introduction by the Government of Philippines in 1996.

12. The first presentation was made by **Mr. Tun Abd. Majid Bin Tun Hamzah, Head of the Prosecution Division, Attorney General's Chambers, Malaysia**. The distinguished

panelist presented Malaysia's perspective on the topic which was of great interest to Malaysia as it was very real and posed difficult challenges to Malaysia as a country that attracted migrants mainly from all over the region.

13. Trafficking in Persons (TIP) or human trafficking and the smuggling of migrants were two separate phenomena, but the line between the two was somewhat blurred. There were issues of irregular migration tied to the two transnational crimes. In the case of irregular migration in Malaysia, mainly there were instances of migrants who entered or remained in a country without the proper authorization and also asylum seekers who were unsuccessful in their bid to obtain asylum and then failed to observe a deportation order. For the purposes of his presentation, he distinguished between the two crimes through the definitions of TIP and human smuggling as defined internationally:

14. Definition of Trafficking in Persons was provided in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children (TIP Protocol) reads thus;

“trafficking in persons” (TIP) shall mean the 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.

15. Definition of People smuggling as enumerated under Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air reads thus;

“smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

16. In principle, trafficking in persons and people smuggling were distinctly different. Trafficking did not require an illegal border crossing, nor was it necessarily transnational, such as in cases of internal trafficking, whereas people smuggling always involved an illegal border crossing. While victims of people trafficking were regarded as commodities, individuals who were smuggled across borders were said to be more like clients (of the smugglers) who paid for the service.¹

17. However, it was recognized that what may begin as a migrant smuggling offence may also reveal the additional offences of trafficking in persons if, upon arrival at the destination or enroute, the smuggled migrant was further exploited as defined under Malaysia's Anti-Trafficking in Persons Act 2007 (ATIP 2007). For example, if those migrants entered illegally or

¹ <http://www.aic.gov.au/publications/tcb/tcb002.html>

legally and their employment was prearranged or facilitated by someone and exploitation within the meaning of ATIP occurs, it was therefore possible that offences under ATIP were being committed. Thus investigating officers and prosecutors were being trained to sensitize them to both aspects of the problem to enable proper identification and determination of the offences to be done at the outset. This would also ensure that rescued persons would be accorded the proper treatment under the applicable laws.

The question of consent

18. He elaborated on some of the points that distinguished the two crimes. In almost all instances of people smuggling, the individual being smuggled had consented to illegally crossing a border. In cases of aggravation such as cruelty, inhumane treatment or reckless endangerment, consent was nullified. It was important to note that consent was also irrelevant when dealing with a child. A further point to note was that trafficked victims could consent to the movement; however, the terms that were being consented to were generally fraudulent or deceitful. When the true conditions became clear - that is, the trafficked person had not been granted the promised type of employment, working conditions and/or payment arrangements - their initial consent, if given, was meaningless. This was also the case where if consent was given under coercion to comply.

The recruitment process

19. Until the exploitation had occurred, most of the time it was difficult to distinguish between a 'trafficking in persons' and a 'smuggling' case. People smugglers were more likely to be approached for their services. In contrast, a trafficking 'recruiter' may make the initial contact with the potential trafficking victim if they fitted the demand profile. The demand profile may be specific for the type of work required in the destination country. The recruiter had the intention of deceiving or coercing people to be trafficked and exploited for financial gain. Once lured, the recruiter would gain the consent of the person to be moved; however, the consent would be nullified by the victim's later exploitation.

Arrival at the destination

20. Upon arrival at the destination, smuggled persons generally made their own way after crossing the border. Fraudulent documents were often used and access to corrupt officials en route could also be needed to cross a border without detection. Trafficking syndicates may arrange for a 'minder' to travel with the victim and transfer them to their housing or employment upon arrival at the destination. Some victims would be issued with fraudulent documentation to enter the destination country.

The role of violence

21. Nevertheless, the use and/or threat of violence distinguished trafficking from smuggling. Smugglers generally had no need to force their customers into complying, hence the use of threats, force and violence was generally avoided. Aggravated smuggling, which involved exploitation, was more serious; however, it did not necessarily involve violence or the

deprivation of liberty. At the other end, traffickers may use threats, force and violence as a means of recruitment, control and compliance of the trafficked victims throughout all stages of their journey.

Potential profits

22. There was no doubt that those two crimes were profit-driven. Smuggling usually required a single payment to assist the illegal migrant to cross borders. Generally the terms were negotiated, taking into account the cost of transportation, cost of fraudulent documents, bribery and their profit margin. On the other hand, traffickers made their profits at several points along the transaction. The recruitment, minding and/or harbouring stages may involve a number of people. This accumulated debt owed by the victim, and costs incurred such as medical treatment may be added to the debt for repayment through work.

Identity of the victims

23. In respect of the identity of the victims, in human trafficking there was an identifiable human victim; a person subjected to exploitation of a kind that went beyond what other illegal migrants might experience. There was a clear identifiable individual who could be termed a victim within the terms of the internationally agreed definition.² In the case of human smuggling, there was no victim in the traditional sense beyond the State whose immigration laws had been broken.

The International Instruments

24. The main international instrument in the fight against transnational organized crime was the United Nations Convention against Transnational Organized Crime (UNTOC). The UNTOC was supplemented by 3 Protocols which target specific areas and manifestations of organized crime. The relevant Protocols were:

- the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (TIP Protocol); and
- the Protocol against the Smuggling of Migrants by Land, Sea and Air (Migrant Protocol);

The main goals of the UNTOC included eliminating the differences among national legal systems and setting standards for domestic laws so that they could effectively combat organized crime.

25. Having distinguished between the two crimes, the panelist moved on to explain what were Malaysia's responses to them? It was noted that despite the TIP Protocol, many countries had yet to enact specific laws and policies on TIP and smuggling of migrants. Malaysia's ATIP 2007 came into force on 28 February 2008 and Malaysia was also a Party to the TIP Protocol

² <http://www.unodc.un.or.th/material/document/Distinguishing.pdf>

which came into effect on 28 March 2009. The ATIP 2007 provided for the setting up of a Council for Anti-Trafficking in Persons (the Council). The functions and powers of the Council were, *inter alia*, to coordinate the implementation of the ATIP 2007, formulate policies and programmes to prevent and suppress TIP, formulate proactive programmes for trafficked persons and initiate educational programmes to increase public awareness of the causes and consequences of the act of TIP. Malaysia had taken the three-pronged approach to combat the crime of TIP as promoted or envisaged by the TIP Protocol.

Three-pronged approach to combat TIP under the TIP Protocol

(a) Prevention

To prevent TIP, the TIP Protocol required States Parties to establish comprehensive policies, programmes and other measures to address the underlying causes and contributive factors such as poverty and to prevent re-victimization.

(b) Protection of victims

In furtherance of the human rights (protection of victim) approach to address trafficking in persons, the Protocol required States Parties in appropriate cases and to the extent possible under their domestic laws to-

- provide legal aid and assistance to victims by educating them about other court proceedings that could be initiated against offenders besides ensuring victims' privacy;
- provide child victims basic rights such as housing, education and care in governmental custody as provided for in the Convention on the Rights of the Child (CRC);
- enable victims to seek compensation for damages, including fines, penalties or forfeited proceeds as well as restitution from offenders;
- consider immigration laws permitting victims of trafficking to remain on their territory, temporarily or permanently; and
- accept and aid, without delay, the return of victims of trafficking who are nationals or residents of that nation.

26. Malaysia also followed the Office of the High Commissioner for Human Rights' (OHCHR) "Recommended Principles and Guidelines on Human Rights and Human Trafficking" to provide practical, rights-based policy guidance on the prevention of trafficking and protection of victims of trafficking. Protection of victims of trafficking under the Guidelines included provisions on adequate physical and psychological care of victims, legal assistance, protection and temporary residence permits to victims who were required to appear as witnesses in legal proceedings, safe and, where possible, voluntary return to the country of origin and legal alternatives to repatriation in cases where it was reasonable to conclude that such repatriation would pose a serious risk to the safety of victims or their family.

(c) Prosecution

The Federal Constitution of Malaysia in Articles 6(1) and (2) prohibits slavery. Prior to the enactment of the Anti-Trafficking in Persons Act 2007, Malaysian officials used other laws such as the Penal Code, the Immigration Act and Restricted Residency Act. Immigration officials had stepped up border security measures and were scrutinizing foreign visa applicants more closely to look for potential trafficking victims.

27. States Parties were required to specifically criminalize TIP *in all its forms* and ensure that the law was effectively enforced. States Parties were also encouraged to enhance border control measures to facilitate detection and arrest. In this regard, the main offences under the ATIP were as follows:

- Section 12 - Trafficking in persons (adults) for the purpose of exploitation which provides for the punishment of imprisonment not exceeding 15 years and fine.
- Section 13 - Trafficking in persons (adults) for the purpose of exploitation by means of threat, force, coercion, abduction, fraud, deception, etc. Punishment provided is imprisonment not less than 3 years but not exceeding 20 years and fine.
- Section 14 - Trafficking in children for the purpose of exploitation provides for imprisonment not less than 3 years but not exceeding 20 years and fine.

28. Further, the ATIP 2007 provided for commensurate penalties for the TIP and TIP-related offences. It criminalizes not only the act of TIP, but also other ancillary offences such as profiting from the exploitation of a trafficked person (section 15), recruiting trafficked victims (section 19), providing facilities in support of TIP (section 20) and also harbouring persons (section 22).

29. In addition to the above, section 21 ATIP also provided that any person who provides financial services or facilities in relation to the commission of an act of trafficking committed an offence. For this purpose, financial services or facilities included services provided by lawyers and accountants acting as nominees or agents for their clients.

30. Therefore, from the summary of the offences provided under ATIP it could be concluded that wide range of trafficking in persons offences and related offences were covered under the Act which made it comparable to the provisions in Canada, Australia and the United Kingdom.

31. He further elaborated that, recently, the Public Prosecutor had issued a directive that all cases involving foreigners must be investigated under Anti-Trafficking in Persons Act 2007, except where offences committed by them fell within the ordinary criminal laws. And cases under ATIP must be referred to the Headquarters before any prosecution were instituted. There had been cases where charges had been preferred against the perpetrators under the Penal Code or Immigration Act and later converted into ATIP cases. Till that date they had registered 51 cases which comprised of 38 accused persons and 73 victims. There were 46 pending cases in the courts.

32. On law enforcement in Malaysia, a comprehensive approach to enforcement had been undertaken whereby the ATIP was enforced by:

- (i) the Royal Malaysia Police (RMP);
- (ii) the Immigration Department of Malaysia;
- (iii) the Royal Malaysia Customs; and
- (iv) the Malaysian Maritime Enforcement Agency (MMEA).

33. Further, in law enforcement, the Royal Malaysia Police (RMP) co-operated with ASEANAPOL and INTERPOL to prevent international human trafficking. A watch-list of identified traffickers was maintained to identify human trafficking culprits.

34. With the enactment of the ATIP, the Act provides protective measures for victims and witnesses of crimes of TIP. In addition, Malaysia was currently considering more comprehensive protection for witnesses (and victims who were generally witnesses) through the Witness Protection Act which was still a work in progress. The Act also recognized the rights of the victim of trafficking and distinguished the victim from the suspect of crime. Immunity from criminal prosecution for unlawfully being in the country and possessing of fraudulent travel documents were examples of the legal protection accorded to the trafficked persons.

Treatment of Migrants

35. With respect to migrants, Malaysia made a clear distinction between legal migrants and illegal migrants. Illegal migrants were not prosecuted and regarded as offenders. They were generally deported to their country of origin based on the provisions of the Immigration Acts 1959/1963. Malaysia averred that it applied all the standards applicable to migrants in its exercise to deport them back to their source country. The deportation was specifically for those who were either illegal immigrants or irregular migrants.

36. Legal migrants were protected under the laws in Malaysia. The Immigration Act 1959/63 and the Immigration Regulation 1963 governed and regulated the entry and stay of foreigners into Malaysia as well as to provide offences regarding immigration. Further, under the Employment Act 1955 (Revised 1981), a lawful migrant worker was entitled to equal benefits and rights under the employment laws of Malaysia. These rights included wages, weekly holidays, leave, workmen's compensation, medical care and housing accommodation and social security.

Basic Human Rights/Fundamental Liberties of Migrant Workers

37. In Malaysia, the basic principles of human rights were applicable to migrant workers apart in addition to the rights provided by statute. A migrant worker was entitled to proper housing facilities with basic utilities like water and electricity for peace and enjoyment. Apart from that, the relevant fundamental liberties as enshrined under Part II of the Federal Constitution were, subject to applicable law, also applicable to legal migrant workers. These included the right to life and personal liberty, the right to be informed of the grounds of arrest

and to consult and be defended by a legal practitioner of his choice, freedom of movement, the right not to be subjected to forced labour and freedom of religion.

38. Malaysia was a party to the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Discrimination Against Women (CEDAW) entailing all rights for migrants falling within the two Conventions with the exception to Malaysia's reservations to the said Convention. All obligations required had or were in the midst of being fulfilled.

39. In addition, although Malaysia was not yet a Party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), to a large extent the protections to be accorded to migrants for employment which were referred to in ICMW had been recognized in the ILO Convention No. 97, namely, the Convention concerning Migration for Employment, of which Malaysia has been a party since 3 March 1964.

40. Apart from the international fora, efforts in addressing the rights of migrant workers were also undertaken in the regional forum. Pursuant to the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration) in 2007, Malaysia was also member of the ASEAN Committee on the implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers. Migration and foreign workers issues were also taken up in the drafting of the ASEAN Political Security Blueprint and the ASEAN Socio-Cultural Community Blueprint.

41. Malaysia also dealt with the issue of migrant workers on bilateral basis by executing legally binding instruments to regulate the entry of migrant workers to Malaysia. Those efforts were to ensure that the workers entered Malaysia legally which in turn would ensure that due protection is accorded to them under the law and also to protect Malaysia's national security and public order.

42. Accordingly, human rights in this regard should also be looked upon in a holistic and realistic manner by taking into account not only the interests of the migrant workers but also the employers in particular and Malaysia generally.

43. Malaysia was committed towards achieving a plan of action that would facilitate both migrating and repatriating process of migrant workers which held accountable both sending and receiving countries.

44. Malaysia had been burdened with the arduous tasks in the repatriation of foreign workers whose document were found invalid due to legal reasons. Malaysia spent millions of Ringgits on food, health, documentations and transportation. Thus, it was timely for the sending country to share the burden equally.

Trafficking offences

45. The internal directive for the Prosecution Division issued recently (whereby all cases involving foreign nationals not investigated for offences under ordinary criminal laws would be classified and investigated as TIP cases until determined otherwise) was a measure taken to show

Malaysia's serious commitment towards combating TIP. If these migrants had been classified as victims of TIP under the ATIP, the provisions of ATIP would be applicable as far as their status as victim was concerned. However, the Immigration Act was still applicable for the purpose of their deportation to their country of origin.

Other relevant laws

46. Malaysia also had other laws to deal with the crime of TIP, namely,

- (i) The Child Act 2001: The offences of trafficking and abduction of children were also provided under Part VIII of the Child Act 2001. The acts of the sale of children, child prostitution and child pornography were also punishable under the ATIP 2007 if these acts satisfy the elements of trafficking in respect of children as provided for under section 14 of ATIP. The meaning of "child" as provided in the Child Act is "a person under the age of eighteen years" and in relation to criminal proceedings, means "a person who has attained the age of criminal responsibility as prescribed in section 82 of the Penal Code" [Act 574].
- (b) The Penal Code: Sections 372 to 372B of the Penal Code provided for crimes relating to prostitution.
- (c) The Anti-Money Laundering and Anti – Terrorism Financing Act 2001: The Anti-Money Laundering and Anti – Terrorism Financing Act 2001 (AMLATFA 2001) came into force on 15 January 2001 and specifically criminalizes money laundering in Malaysia for over 250 predicate offences. The AMLA 2001 is a comprehensive statute which covers tracing, freezing, forfeiture and confiscation of proceeds of crime. It also imposes a legal duty to report of suspicious transactions (STRs). The AMLATFA was also the platform available to address the issue of confiscation of the proceeds of crime derived from acts of TIP. The offences under ATIP were to be prescribed as predicate offences under the AMLATFA. Initiatives to prescribe the offences are being seriously considered³.

Problems and challenges faced by Malaysia

47. The panelist noted that Malaysia was very conscious of the growing seriousness of the TIP problem within the Asian and African region since those countries were the sending, transit as well as destination countries for TIP.

48. He submitted that Malaysia's law on TIP was compatible with the international legal framework relating to combating TIP as well as safeguarding the human rights of the trafficked victims in particular women and children. The harmonization process was done when the ATIP was still at the drafting stage to ensure that the provisions of the Act were consistent with the requirements of the TIP Protocol and also taking into account the human rights elements of the TIP victims.

³ Noted that Attorney General's Chambers reminder to Ministry of Home Affairs and Central Bank of Malaysia on this matter was sent in March 2008.

49. As a transit country for TIP, Malaysia faced problems in detecting trafficked persons and in detaining them if they appeared to be legitimate travellers. If detained, other problems such as place and period of detention, assistance to be given, verification of nationality and repatriation arose.

50. As a destination country, Malaysia faced similar problems to detect the trafficked persons at points of entry and after they were rescued. Arrest and prosecution of the traffickers had proven to be difficult due to the hierarchical nature of the syndicates and their good organisation. Without the co-operation of the trafficked persons, it was almost impossible to secure convictions. Further, language was also a problem faced by Protection Officers established under the ATIP as well as posing “communications barriers” with the Courts. The problem was often compounded by the refusal of foreign embassies to recognise the victims as their nationals.

51. The main hurdle that had to be overcome was getting the witnesses to co-operate and testify in court. There were instances where the victims simply refused to identify the perpetrators for fear of adverse repercussions which may take place not there but on their families back home. Hence, cooperation and joint-efforts between authorities were very much welcomed to weed out the syndicates both local and foreign.

US Trafficking in Persons Report 2009

52. The US Trafficking in Persons Report 2009 (US TIP 2009) on *inter alia* Malaysia's efforts to combat trafficking in persons for the period of April 2008 to March 2009 was issued on 16 June 2009. The US TIP 2009 evaluation had downgraded Malaysia from Tier 2 (Watch – List) in 2008 to Tier 3 which lists countries whose governments do not fully comply with the minimum standards (as defined under the US Trafficking in Persons Protection Act 2000) and were not making significant efforts to do so.

53. Although Malaysia was demoted to Tier 3 in the US TIP Report of 2009, it was taking concrete measures to address the shortcomings identified in its enforcement of the ATIP 2007 including through the establishment of a Joint Legal Task Force in the Attorney General's Chambers to provide better coordination of criminalizing and prosecution of TIP cases, including transnational TIP cases.

54. One of the steps proposed to be taken to counter the US TIP Report 2009 was to provide statistics on arrests, prosecutions, convictions, compounding of offences and deportations relating to the trafficking of persons in Malaysia in order to disprove the US assertion that Malaysia was not making significant efforts to fully comply with the minimum standards (as defined under the US Trafficking in Persons Protection Act 2000). As Malaysia stepped up its enforcement in curbing TIP and human smuggling, the downside was an increase in irregular migration resulting in an increased number of arrests, prosecutions, convictions and deportations, as the numbers shown in the statistics provided by the Immigration Department of Malaysia.

55. Based on the statistical data provided by the Immigration Department, it was noted that the countries of origin of the offenders included Indonesia, Philippines, Bangladesh, Myanmar,

India, Thailand, People's Republic of China, Pakistan and Cambodia. In this regard, it was further noted that the majority of the offenders were from Indonesia, Philippines, Myanmar and Bangladesh.

56. The year 2008 was especially significant in relation to Malaysia's fight against trafficking in persons as not only was there an increase in arrests, prosecutions, compounding of offences and deportations related to *inter alia* immigration offences, the ATIP came into operation during that year, and prosecutions were conducted under the Act which resulted in 4 convictions to date. Apart from that, the Director-General of Immigration and the Deputy Director-General of Immigration were arrested for corruption related to the issuance of work permits to foreign workers which could facilitate the trafficking in persons, which clearly showed that Malaysia was determined and serious about punishing errant public officials involved in the trafficking of persons even at a very high level.

57. To date, 4 people had been convicted under the ATIP since its coming into operation on 28 February 2008, with the first conviction being recorded in December 2008 where Punitha Raja an Indian national was convicted under section 13 for forcing a female domestic worker into prostitution and was sentenced to 8 years imprisonment. On 15 July 2009, Dubir Sukarji and Sawal Lajiman were charged under section 23(2) of ATIP and were each sentenced to 5 months imprisonment for trafficking 8 and 7 foreign nationals respectively. An appeal is pending as the sentence was deemed inadequate.

58. On 10 July 2009, 2 persons were charged in the Kuala Lumpur Sessions Court under sections 13 and 15 of ATIP, while on the 13 July 2009 Ng Yu Wah and Lindawati (an Indonesian national) were charged in the Butterworth Sessions Court under section 14 of ATIP with the trafficking of a 2 month-old girl.

59. On 14 July 2009 a businessman and a Chinese national were charged in the Butterworth Sessions Court under section 14 of ATIP with the trafficking of a 17-year-old Thai girl.

60. On 17 July 2009, 9 people including 5 Johor Immigration Department officers were arrested and investigated for alleged involvement in an international human trafficking syndicate. The officers were believed to have received payments from a syndicate for the "sale" of a group of people, comprising mostly Rohingya refugees, as forced labour in various sectors like the fisheries industry. On 26 July 2009 Rahman Selamat, an Immigration Department officer from Johor was charged in the Kota Bharu Sessions Court under the ATIP for exploitation of Ikbali Mohd Ali, a Myanmar citizen.

61. Thus, from the above, it was clear that the Government of Malaysia was moving fast to tackle the TIP menace using the ATIP as its main weapon since its coming into operation on 28 February 2008. In fact, the current policy of the Government was to tackle the said menace using the ATIP first, and only if the Government was unable to charge a suspect human trafficker under the ATIP due to insufficient evidence, then the Government would look into charging the suspect human trafficker under other legislation.

62. Malaysia was also building its capability in human resources in combating TIP. This was part of the three-pronged approach taken to implement the TIP Protocol. Training for investigators and prosecutors were being carried out by the respective Committees under the Council. The Committee on Enforcement, headed by the Royal Malaysian Police carried out training for investigators and enforcement agencies. This included training on the early identification of trafficked victims at borders as well as immigration points. As the Committee was made up of the four main enforcement agencies designated under the ATIP, there was sharing of investigative techniques and exchange of information between the respective enforcement agencies.

63. In addition, training of prosecutors was being handled by the Legal Committee of the Council which was headed by the Attorney General's Chambers and was responsible to train prosecutors and enforcement officials on the prosecutorial and compilation of evidence for purposes of proving a case in court. Training modules had been drawn up in collaboration with the Judicial and Legal Training Institute of Malaysia to provide courses and training for judicial and legal officers.

64. As part of its own internal capability-building, the Prosecution Division of the Attorney General's Chambers organized a Seminar on TIP for its Deputy Public Prosecutors on 15 November 2008. This seminar on TIP was designed for all the heads of all units of the Prosecution Division which aimed to be the forum of experience-sharing and to better understand the importance of the ATIP.

65. Efforts to ensure awareness among the public had also been undertaken by the Council especially with the involvement of the Non-Governmental Organizations (NGOs). The Council also ensured the co-ordination of domestic inter-governmental agencies for the development of expertise and operational co-ordination. Thus, intelligence and expertise sharing between agencies would enable better prevention of the crime. This included ensuring that the land and sea borders were guarded and manned with specific training to identify elements of TIP.

66. Under the ATIP, once a person was found to be a trafficked person, he or she would be placed in a place of refuge. These places were maintained by the Welfare Department of the Ministry of Women, Family and Community Development and were equipped with sufficient amenities to ensure the trafficked persons were accorded with proper care and protection. Currently, there were two places of refuge established pursuant to ATIP which sheltered women and children respectively.

67. The other safeguard accorded to the victims was the rehabilitative process that a victim underwent while being placed in a place of refuge. Victims would be taught basic self-improvement skills during the duration of their stay.

68. Trafficked victims were deported back to their country of origin without being prosecuted unless they were found to have committed other unlawful acts while in Malaysia. This was consistent with Article 8(1) of the UNTOC. However, Article 8(2) stated that repatriation "shall preferably be voluntary", was less acceptable to Malaysia because Malaysia did not have the resources to shelter those persons indefinitely. By virtue of section 51 of ATIP, the trafficked

victim who was a foreign national would be placed in a place of refuge for a period of three months and upon the expiry of the Protection Order, be deported in accordance with the Immigration Act 1959/63.

68. Further, trafficked victims who were required to appear as witnesses in criminal proceedings were also placed under the Protection Order as mentioned above. By section 52(1) of ATIP, the victim's statement was to be recorded before a Magistrate during the period of the Protection Order. By section 52(6) of ATIP, the statement could be taken and adduced in court without the presence of the victim. Therefore, it was not necessary to allow a victim to remain in the country. The trafficked persons were also given protection against media reporting and publication of identity. The names, addresses and particulars of the victims were not to be published in any print or electronic media.

69. The arrests of the Director-General of Immigration, the Deputy Director-General of Immigration and 5 Johor Immigration Department officers on offences related to the trafficking of persons, as well as the charging of an Immigration Department Officials under the ATIP was Kota Bharu was clear proof that the Government of Malaysia would not hesitate to take severe action against any immigration authorities if there was credible evidence that offences had been committed by them.

70. In conclusion, the Head of the Prosecution Division, said that the crime of TIP and smuggling of migrants were not only a Malaysian problem; it was also a global phenomenon. Globalisation had brought about increased job opportunities abroad. As countries took stringent measures to curb these crimes and ensure regular migration, transnational criminals that operate across borders due to the lucrative nature of the business also stepped-up their operations to "offer" alternatives to vulnerable peoples seeking a better life abroad. These two crimes threatened the sovereignty and integrity of a State and undermined the State's sovereign right to determine who entered into its territory and which migrant had the legal rights to remain. Apart from the enforcement of national laws, international co-operation remained an important measure to enable States to combat these crimes effectively.

71. The efforts to combat trafficking in persons by Malaysia could be further improved by, among others, making serious efforts to implement the recommendations for Malaysia contained in the US TIP 2009 including better implementation and enforcement of the ATIP and ensuring that victims of trafficking were not threatened or otherwise punished for crimes committed as a result of being trafficked with the aim of moving Malaysia up to Tier 2 and above.

72. The second presentation was made by **Mr. Ebo Barton Ordo, Deputy Attorney General and Deputy Minister of Justice, Ghana and Vice-President of the Forty-Eighth Session**, on behalf of Ghana. He said that if there was any one single issue that gained global attention in recent years, it was the issue of trafficking in persons and smuggling of migrants. There was an urgent need to accord trafficking issues more attention than ever. In recent decades, population mobility had increased in almost all regions of the world and transnational migration had particularly increased.

73. In the first place, each year, hundreds of thousands of migrants were moved illegally and legally by highly organized international smuggling and trafficking groups across countries worldwide. Although trafficking in persons could be confused with smuggling of migrants, there were significant differences between these two phenomena. The smuggling of migrants was often performed in dangerous or degrading conditions and also involved migrants who had consented to the smuggling. Smuggling usually ended at the arrival of migrants to their destinations. On the other hand, trafficking implied that victims either never consented, or if they initially consented, the consent was done under coercive, deceptive or abusive actions of the traffickers. In addition, trafficking involved the on-going exploitation of the victims in some manner that generated profit to the traffickers upon the arrival of the victims to their destinations.

74. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime defined trafficking as “.....the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat of 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 persons, for the purpose of exploitation”.

75. It had been suggested that smuggling may increase the risk of trafficking. Owing to the extreme vulnerability of smuggled migrants, and due to their irregular situation, they were often hugely indebted to smugglers. In order to pay back these debts, they may face degrading or humiliating jobs at the expense of their health and rights. As a result they could easily go from irregular migrants to being victims of trafficking.

76. Recent trends indicated that the number of victims of trafficking had increased in the last decade and trafficking had spread, affecting a large number of countries around the world. Social and economic disparities, rising unemployment, the disruption of traditional livelihoods, eruption of natural disasters and armed conflicts, had pushed people to search for better opportunities. When these facts were combined with restrictive policies with regard to immigration or asylum in the countries of destination, migrants could fall into alternative migration methods, including trafficking with serious implications regarding the human rights of affected persons.

77. According to the Polaris Project, human trafficking was the modern day practice of slavery and comprised the fastest growing criminal industry in the world. The trafficking industry had been reported to be the third most lucrative business after drugs and arms trade according to the UK Human Trafficking Centre. Every year traffickers generated billions of dollars at the expense of victimized people around the world.

78. Trafficking was considered to be a gendered phenomenon. Trafficking and related exploitation affected mainly women and girls due to the persistent social and economic activities that made women and girls particularly vulnerable to trafficking. In addition the demand and patronage of the prostitution industry seemed to be on the high side and as such creating an opportunity for traffickers and smugglers. Women and girls were often thrown into the sex industry and were furthermore subjected to multiple sales according to the whims of traffickers.

79. Yet there was increasing evidence that other groups such as boys and men were also being trafficked. Trafficking was not only confined to the sex industry. Trafficked persons were also 'used' for other purposes such as in sweat shops, in bonded labor, servants, or dirty difficult or dangerous jobs (The three D jobs).

Trafficking and Organized Crime

80. Trafficking and migrant smuggling were a form of organized crime. Irregular migrant and victims of trafficking were now seen as another commodity in a larger realm of criminal commerce that often involved other commodities such as narcotics, weapons and money-laundering. Trafficking had gone global as other forms of organized crime, linking groups and forming complex networks. The relatively low risks of trafficking and appealing profits were root factors for criminals to engage in trafficking activities. For traffickers risks were limited as victims were intimidated by them both in receiving countries where the victims feared prosecution and deportation, and in the countries of origin where victims were vulnerable to retaliation, or even made to swear an oath before a shrine never to reveal any information in connection thereof.

International initiatives

81. The role of transnational organized crime in the trafficking of persons and the smuggling of migrants was growing. As smuggling and trafficking-related activities took place in numerous countries, governments could not successfully combat these offences in isolation. In addition many countries lacked specific legislative provisions to deal adequately with these issues. One reason was that the practice was not easy to detect unlike ordinary crimes. For this reason the international community had begun a concerted effort to thwart international criminal networks. Several countries had ratified the United Nations Convention against Transnational Organized Crime (UNTOC), which came into force on September 29, 2003. The Convention extends tools for co-operation against organized crime to a global level, supporting international information sharing and law enforcement co-operation. Other Protocols had also been adopted by the UN General Assembly to supplement the Convention. This included the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Air and Sea. Both protocols offered improved legal and judicial tools to prevent and combat smuggling and trafficking, enhanced information sharing and promoted co-operation among states to achieve the objectives therein.

82. With the adoption of these international legal instruments, it was hoped that countries would be better equipped to address the issue of trafficking and organized crime as governments developed the necessary local legislation in respect of the , enforcement, power to investigate, prosecute and punish traffickers and to confiscate their profits.

The Ghanaian picture

83. Mr. Ebo Barton Ordo with reference to the situation in Ghana stated that it was a source, transit, and destination country for children and women trafficked for the purposes of forced labour and commercial sexual exploitation. Trafficking within the country was more prevalent

than transnational trafficking and the majority of victims were children. Both boys and girls were trafficked within Ghana for forced labour in agriculture and the Fishing industry, for street hawking, forced begging by religious instructors, as porters and possibly for forced kente weaving. Over 30,000 children were believed to be working as porters or Kayaye in Accra alone. Annually the International Organization for Migration (IOM) reported numerous deaths of boys trafficked for hazardous forced labour in the Volta Lake Fishing Industry. Girls were trafficked within the country for domestic servitude and sexual exploitation. To a lesser extent boys were also trafficked internally for sexual exploitation, primarily for sex tourism. Transnationally, children were trafficked between Ghana and other West African Countries; primarily Cote d'Ivoire, Togo, Nigeria, The Gambia, Burkina Faso and Gabon for the same purposes listed above. Children were trafficked through Ghana for forced labour in agriculture in Cote d'Ivoire, including working on cocoa farms. Women and girls were trafficked for sexual exploitation from Ghana to Western Europe, and from Burkina Faso through Ghana to Cote d'Ivoire. During the year 2008, Chinese women were trafficked to Ghana for sexual exploitation and a Ghanaian woman was also trafficked to Kuwait for forced labour. In 2008, the UN reported that a form of ritual servitude called *Trokosi* in which young girls were subjected to forced labour and sexual servitude continued in at least 23 fetish shrines.

The Ghanaian initiative

84. The Government of Ghana had not fully complied with the minimum standards for the elimination of trafficking. However, it was making significant efforts to do so in spite of limited resources. During the year, Ghanaian Police intercepted a greater number of trafficking victims than the previous year.

85. There were increased efforts being made to prosecute and convict trafficking offenders, including those who subjected children to forced labour in the Volta Lake fishing industry and those who forced women and children into prostitution. Plans were in the pipeline to establish additional victim, shelters, particularly for victims of sex trafficking. Officials were also being trained to be able to identify trafficking victims among women in prostitution and to respect victim's rights.

86. In Ghana, internal trafficking was intertwined with the socio-cultural dynamics of the rural folks. It was a tradition which had been so deeply entrenched that a lot of patience and education was needed to fully conscientise the people. The Ghanaian initiative involved intensive one-on-one education with the community leaders over time and provisions of incentives to re-locate victims who may be rescued.

87. It was important to acknowledge the vital roles being played by the IOM and the Royal Danish Embassy in capacity building and rescuing of victims. They were key partners to the Government of Ghana in the combating of trafficking.

88. The panelist said that in February 2009, IOM sponsored a week's study tour of the United Kingdom Human Trafficking Centre (UKATC) in Sheffield. The tour was organized for officers from the security agencies, immigration, the judiciary and the Attorney General's Department. The trip afforded the group a first hand experience and at close range, how organized a crime

trafficking has come to be. It also brought to the fore the seriousness of the inter-agency collaboration between the various stake holders in the UK. Ghana had taken a cue and was following in similar steps. Apart from the study tour there were a series of seminars and training the trainers designed to build a strong capacity for combat against trafficking. Such seminars were also designed to serve as collaborative workshop for information exchange and the building of partnership and networking.

89. Guided by international guidelines Ghana had taken a multi-pronged approach to combating Human Trafficking. These included legislation for prevention and prosecution of offenders while ensuring the protection and re-integration of victims.

Legislation

90. Ghana had already passed the Human Trafficking Act, 2005. The Act criminalizes trafficking in persons and provided for its prevention, prosecution of traffickers and resettlement of rescued victims. The Act further provided for a Victims Fund from which funds for anti-trafficking operations and related matters could be drawn.

91. Ghana's Criminal Offences Act, Act 29 of 1960 also contained provisions that further supported the Human Trafficking Act. Some of these provisions included Rape, Kidnapping, Extortion, Conspiracy, Torture, and Unlawful confinement. These may occur during trafficking and exploitation, and may be used to aid prosecution. Punishment for convicted traffickers was a minimum of 5 years and could be more if the above-mentioned ancillary offences were also proved in court.

92. The Ministry of Justice and Attorney General's department in 2008 opened an Anti-human trafficking desk in the Prosecutions Division. The Desk was headed by a Chief State Attorney. The Desk monitored and prosecuted cases on Human Trafficking. It also gathered and shared information and collaborated with other relevant agencies.

Prosecution

93. The Government of Ghana had demonstrated efforts to combat trafficking through law enforcement during the past year. Ghana prohibits all forms of trafficking through its 2005 Human Trafficking Act. This Act prescribes a minimum penalty of five years imprisonment for all forms of trafficking. This penalty was sufficiently stringent and commensurate with penalties prescribed for rape.

94. Thereafter, the Deputy Attorney General illustrated the above measures through reference to certain cases. In respect of cases the trend was quite slow. In 2008, a Nigerian Trafficker was prosecuted in the case of *The Republic vs. Pricess Depu*. She was convicted and sentenced to 8 years imprisonment with hard labour, for recruiting, transporting and harbouring a Togolese girl for the purposes of exploitation in Burkina Faso.

95. On 22nd June 2009, a court in Accra convicted and sentenced three Chinese Nationals, namely James XU Jin, Chou Xion Ving and Sam Shan Zifan, to a total of 39 years in prison for

recruiting, transporting, harbouring and sexually exploiting their victims. The traffickers recruited women from China with the promise of getting them jobs in a restaurant in Ghana. Upon their arrival in Ghana the recruited women discovered that no such restaurant existed. Their travel documents were taken from them and they were forced into sexual slavery and exploited.

96. The prosecution process had faced some challenges. During the year a case against suspected traffickers arrested in November 2007 for forcing 17 women into prostitution could not be prosecuted because the victims all of whom were from Nigeria, refused to testify.

97. As a matter of fact, trafficking in persons and smuggling of migrants could not continue to be addressed primarily as a 'law and order' problem dealt with mainly within the general crime prevention framework. The complex and organized nature of trafficking and smuggling was so diverse and well structured that if care was not taken, victims of cross-border trafficking would continue to be criminalized and prosecuted as illegal aliens, undocumented workers or irregular migrants, rather than treated as victims of organized crime. The support and protection of victims of Trafficking should be a key-element for governments when formulating anti-trafficking policies.

98. In conclusion Mr. Ebo Barton Ordo, stated that the Government of Ghana looked forward to combating trafficking in all its forms by passing strong legislation, building capacity and strengthening existing structures and institutions. He hoped that the fight against trafficking could be won.

99. **Mr. Adam Mulawarman Tugio, Deputy Director, International Treaties for Political, Security and Territorial Affairs, Department of Foreign Affairs, Republic of Indonesia** was the next panelist. The eminent panelist thanked the President for the opportunity accorded to his delegation to present his views and perspectives with regard to the problem of trafficking in persons (people smuggling) and smuggling of migrants.

100. He said that, globalization had also catered to the problem of trafficking in persons (people smuggling) and smuggling of migrants, which was a reality in today's world. The phenomenon of globalization, involved the movement of capital, goods and services across the world, coupled with the exponential growth in communication and transportation technologies that had contributed to acceleration of migratory movements which were irregular and undocumented. As a result, the international movement of people reached unprecedented high in the human history.

101. Indonesia was of the view that the problems associated with irregular movement of people manifests in smuggling of migrants or people smuggling and trafficking in persons. These two forms of transnational crimes were two-sides of the same coin; thus there was a need to address both simultaneously.

102. Numerous factors contribute to the international movement of people. One could classify them as pull and push factors. The former refers to labour market opportunity while the latter would be a combination of causes. The reasons for irregular movements were numerous and

involved economic, social and political aspects. Poverty, economic disparities, labour market opportunities, conflict, deterioration of human rights situation, and insecurity significantly contributed to the continuing prevalence of people smuggling and human trafficking.

103. Although different in the concept and definition, those crimes formed the same pull factors, namely seeking economic opportunity for social betterment. Such a complex cause of the problem needs to be addressed accordingly. Of equal importance would be the fact that they tend to stay longer in a transiting state before going to the destination state; thus adding to the existing burden of the transiting countries. Adding to the complexity of the flows was that migrants and refugees often engaged people smugglers or syndicate of transnational crimes. Irregular migrants often found themselves traveling in the same directions with refugees and asylum-seekers. They often used the same routes and means of transport. It made complex the problem of finding comprehensive solution to the problem as international law accords different legal treatment for the victims. Data provided by the UNHCR, for instance revealed the high number of the refugees or asylum seekers in Asia.

104. Following the discussions on the global financial crises and its adverse impact on the countries in the two regions of Asia and Africa, these situations certainly added to the existing problem, and the syndicates that work across national borders awaited them. It was because people were tempted to go across a national border without adequate legal protection. The economic hardship in home country was forcing them to take this risk. And the most vulnerable group of victims in this regard, was women and children.

105. The panelist said that during such a complex situation, the challenges that the law enforcer's faced was in addressing transnational crime in relation to the irregular people movement. More important was that they usually operate in clandestine manner and took advantage of porous areas. Being an archipelagic state, the geographic condition of Indonesia provided advantage in term of managing marine resource within national jurisdiction. Simultaneously, it posed challenges in terms of ensuring the law enforcement against various types of transnational crimes at sea. This was because the porous border of Indonesia's vast maritime areas. Likewise, it might also apply to terrestrial parts of Indonesia where international boundaries were close to two thousand kilometers in Kalimantan (Borneo) with Malaysia and around thousand kilometer in Papua with Papua New Guinea. For this reason, Indonesia attached great importance to the problem and actively engaged in the efforts to find effective ways to address the problem in a comprehensive manner. In doing so, they implemented measures at national level and that of external level taking the advantage of the existing legal framework on the matter.

106. On measures taken at national level, the panelist stated that Indonesia had adopted a comprehensive strategy at national level which included the prevention, protection and law enforcement against perpetrators of such crimes. In 2007, Indonesia promulgated a national legislation against trafficking in persons through Law No: 21 Year 2007. The new legislation focused on efforts to prevent and criminalize offences related to trafficking in persons as well as to support and protect victims of trafficking in persons. It involved the participation of NGOs and INGOs in promoting social awareness to the community of the problem in relation to smuggling of migrants or people smuggling and trafficking in persons. They also established

Citizen Service Centre in some of the Indonesia's embassies as an effort to give protection to the victims and providing shelters in entry points in the regions where they found most incidents occur. Program of repatriation and rehabilitation were designed for the victims so as to avoid revictimisation.

107. Recognizing the magnitude of the problem of trafficking in persons, the Coordinating Minister for People Welfare leads an inter-agency task force on the matter. They do not only highlight the political commitment of the Indonesian government but also caters the need to synergize and strengthen coordination among related agencies in addressing issues related to trafficking in persons. Similarly the national task force was also established under the auspices of Department of Law and Human Rights to look into matters relating to illegal migrants. The task force would take lead in addressing the influx of irregular migration that has transpired in Indonesia recently.

108. To further strengthen national efforts, Indonesia has signed the Palermo Convention or the UNTOC in January this year through Law Nr. 5 Year 2009. Subsequently, in March 2009 Indonesia ratified two of its supplementary Protocols, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UNTOC, and Protocol against Smuggling of Migrant by Land, Air and Sea of the UNTOC. They believe that the ratification of these international instruments would further enable Indonesia to work closely and cooperate with countries at the international and regional levels. It was because the ratification would provide impetus for State Parties of the Convention to furthering international cooperation, in areas of mutual legal assistance and extradition, in their common efforts to disrupt criminal networks.

109. On measures at the international level the panelist informed that Indonesia also used bilateral approach to address the problem. Communication through diplomatic channel had been instrumental for the repatriation process of (economic) migrant to the country of origin. In many cases, it is also open ways for resettlement program to the third country for those qualified as refugees using by standard of the UNHCR. In addition, a number of extradition treaties had been concluded with countries in the region. The joint border committee's have further been established in bilateral cooperation with neighbours sharing the land boundaries.

110. Most relevant was the conclusion of Lambok Treaty and its framework for implementation of 2008 with Australia whereby the two countries agreed to strengthen bilateral cooperation, among others to fight new threat to maritime security as a result of the transnational crimes. It was complementary to their bilateral cooperation in addressing the problem of illegal migrations through the establishment what was known as the Bali Process in 2002.

111. International cooperation was the prerequisite for attaining success in these common endeavours. For the transnational organized crime usually worked to exploit the lack of irregular migration through the pipeline approach so that it took into account the role of country of origin, transit country as well as destination country. Hence, they promote through close cooperation with their neighbouring countries in the region.

112. Explaining the Bali Process, the panelist stated that no single country would be able to successfully fight these crimes alone. There was a need to strengthen international cooperation and develop comprehensive and integrated responses as well as identify practical measures to reduce pressure on the country of origin, and that of countries in transit as well as in destination state through sharing information and best practices. In that regard, Indonesia with Australia initiated to establish what was known as “the Bali Process” in 2002 due to the growing number of people smuggling in the region in the late 80’s and early 90’s. The Bali Process was the first regional consultative process of its kind in Asia-Pacific.

113. Consequently, on 26-28 February 2002, Bali Ministerial Regional Conference (Bali Process), was convened and it was a forum with the aim for exchanging views and information among ministers and senior officials from Asia Pacific countries to formulate various regional means to tackle irregular people movement including people smuggling, trafficking in persons and other transnational crimes and dealing with various challenges causing illegal migrant and the effect for the people surroundings. One of the outcomes of the Conference was the establishment of Ad-Hoc Experts Groups (AHEG). In the recent years, Indonesia and Australia had convened three Bali Ministerial Regional Conferences (BRMC). The Conference had allowed countries in the region to sharing best experience and developed practical means to fight the problems, particularly taking into account transnational dimension of such crime through the Ad Hoc Group (AHG) which had the mandate to make technical recommendations at the operational level. The AHG acts complementary to the AHEG which would focus on policy recommendation aspects of the problems.

114. AHEG consists of two groups namely AHEG I that dealt with regional and international cooperation under New Zealand coordination and AHEG II which dealt with policies, legislative framework and law enforcement under Thailand coordination. The two experts (AHEG) were established to develop and strengthen the national capacity to combat people smuggling, trafficking in persons and other transnational crimes. AHEG has also accomplished numerous outcomes such as formulating national structure to combat people smuggling, trafficking in persons, identifying means to enlarge public awareness related to people smuggling and trafficking in persons, developing the legislation model to assist the Government in criminalizing the people smuggling and trafficking in persons, identifying various (and to enhance) recommendations to strengthen the capacity of legislation and law enforcement, providing identity verification and false document training, creating a website (www.baliprocess.net/bmcw) and as a forum to exchange information between Bali Process member States.

115. In 2009 emerged the new challenges in the region. Many of the Ministers of the member States were replaced since the previous Ministerial Meeting in 2003 and the need of support from the Ministerial level for renewed focus in dealing with trafficking in persons and people smuggling, had strongly been demanded. Such condition drove the member States of Bali Process to revitalize it. The revitalization was proposed to cope with the new challenges and threats by finding the solution on those issues and ensure the continued support from the regional counterparts to cope with the challenges and threats including the new modus operandi of transnational crime.

116. In the first Ad-Hoc Group Meeting, it agreed on the terms of reference (TOR) of AHG. The TOR stated that members States shall commit to develop the practical results at the operational level to assist countries reducing irregular population movement, improve the regulation related to exchange of information between countries which dealt with the issues and report to the Steering Committee with concrete recommendations for future regional cooperation concerning trafficking in persons and people smuggling.

117. In conclusion, it was said that the Bali Process had played an important role to provide a forum for countries in the region and effected countries to share experiences and best practices. Based on that, others would be able to formulate various policy and practical recommendations at the operational level in order to curb/fight people smuggling/trafficking in persons. The Informal nature and non-binding approach of the Process had contributed to allow countries in the region to strengthen their cooperation, particularly emphasizing the important role of origin, transit and destination countries in solving the problems.

118. The **Delegate of the People's Republic of China** observed that with the deepening of globalization, countries were becoming more interdependent and people-to-people exchanges more frequent. Orderly movement of people had been a source of vitality to human civilization, and legal transnational migration had made tremendous contribution to the economic growth, cultural exchanges and social progress of all countries. At the same time, the emergence and spread of the crimes of transnational human trafficking and smuggling had become a serious obstacle to the normal movement of people and relations among countries. Trafficking in persons was not only a gross violation of human rights, but an insult to human dignity. It is a transnational crime that poses a constant threat to economic development and social order of all countries, causing wide concern of the international community.

119. The delegate noted that China had been an advocate for legal movement of people in accordance with international treaties and relevant national laws. China opposed all forms of human smuggling and other transnational crimes and had worked hard for sound and orderly international personnel exchanges. In recent years, the Chinese Government had taken a series of measures, including legislation, law enforcement and international cooperation, to combat the crime of trafficking in persons and had achieved great results: (i) China has enacted or revised the Criminal Law, Law of Rights and Interests of Women, Labour Law, Law on the Protection of Minors, Law on the Prevention of Juvenile Delinquency, Marriage Law, Adoption Law, etc., providing strong legal guarantee for combating human trafficking and the protection of the rights and interests of women and children. (ii) In December 2007, the State Council of China promulgated China's Action Plan for Combating Abduction and Trafficking of Women and Children (2008-2012), which covers all aspects of the anti-abduction work, such as crime prevention and combating, victim rescue, assistance, repatriation and rehabilitation and international cooperation. The Plan clearly sets out the functions and responsibilities of the 28 authorities involved, and marks a new phase of China's anti-abduction work. (iii) The Chinese Government paid great attention to the supporting measures and the protection of human rights while combating trafficking in persons. A national DNA database was now being constructed in China to facilitate timely identification of the parents of the abducted children. The Chinese government respects their right of independent choice of the abducted women, works actively to rescue and assist the abducted beggars. The Chinese government maintained close

communication with the non-governmental organizations (NGOs) set up by the relatives of the victims, which were invited to help the public security authorities' fight trafficking in persons. (iv) Given the difficulties in investigation and rescue work concerning transnational trafficking cases, China attached importance to judicial cooperation with other countries. In accordance with the United Nations Convention against Transnational Organized Crime and nearly 100 bilateral treaties on judicial assistance in criminal matters and on extradition, China had conducted productive cooperation with relevant countries in some cases through police cooperation or judicial assistance.

120. Talking about the international cooperation in combating trafficking in persons, it was said that one must mention the Protocol to Combat Trafficking in persons as this Protocol was the most important legal instrument for the international community to combat trafficking in persons. Quite a few Member States of the AALCO had become State Parties to the Protocol. Although China had not become a State Party to the Protocol, they had followed closely the formulation of the Protocol and relevant research. China had participated in all the meetings of the ad hoc committee for the drafting of and negotiation on the United Nations Convention against Transnational Organized Crime and its Supplementary Protocols. Last April, the Chinese delegation attended the first meeting of the open-ended interim working group of the Protocol, participated in the discussion of various topics, including "Global Adherence", "The Involvement of NGOs", "Implementation Review mechanism", "Global Initiative" and "Criminalization of Trafficked Persons", exchanged experience with representatives from other countries, and was informed of the implementation of the Protocol in other countries. In order to raise public awareness of the trafficking problem, improve domestic legislation and international cooperation on anti-abduction, and prosecute the crime more effectively, the competent Chinese authorities were carefully studying the issue of how to harmonize domestic law with the Protocol, and would start the legal procedure for China's accession to the Protocol in due time.

121. The delegate emphasized that human trafficking and smuggling and other transnational crimes had profound economic and complex historical background. Their solution could not be achieved overnight. It required joint efforts by all States. In view of the severe challenges of transnational human trafficking, China proposed the following:

122. First, AALCO should continue following this issue. All AALCO Member States should, enhance trust on the basis of mutual trust on the basis of mutual respect of sovereignty, equality and mutual benefit. When combating illegal migration, it is important to reflect the interests and concerns of all Member States and avoid double standards.

123. Second, exchanges and cooperation on legislation, law enforcement and justice should be strengthened. Past practices had proved that information and intelligence sharing and joint law enforcement among Member States were conducive tackling organized smuggling activities. China was ready to exchange and share experiences and practices with Asian and African countries on combating and preventing human smuggling for mutual leaning and work with them to fight this crime with a view to creating good conditions for normal international movement of people.

124. Third, channels for the movement of people should be expanded. To curb and reduce illegal migration at its root, countries should further facilitate the movement of people between Asian and African countries and between developing countries and provide more channels for and guide the legal and orderly movement of people.

125. In this regard, the delegate emphasized that Chinese government was ready to work with all Asian and African countries to strengthen coordination and cooperation and make due contribution to the movement of people among Asian and African countries, and security economic development in these regions and beyond.

126. The **Delegate of the Sultanate of Oman** stated that it was very difficult to know the exact figures of persons who were trafficked in the multibillion dollar trade of Human Trafficking. In some countries there was a considerable lack of data, perhaps no data was available as to whether children were trafficked for drug smuggling or otherwise and little data on children trafficked for sexual exploitation. The delegate gave out certain statistical figures given by NGO (Doctors at War) in their report, according to which:

- Some estimated 27 million people were trapped in slavery, out of which 13 million are children
- The average age of a young woman first being trafficked is 12-14 years old
- Over 50% of all human trafficking victims were children
- 75% of all victims of human trafficking were female
- 75% of human trafficking is for sexual exploitation
- A relatively large percentage of young women and children that were trafficked for sexual exploitation would become HIV positive

127. From the above report, and as generally known, there were a high percentage of women and children that were trafficked. Indeed majority of these people suffer from poverty, lack of economic opportunities, and lack of education which made them potential victims of traffickers. Any State therefore, in its drive to prevent Human Trafficking should look into these issues and improve them.

128. The Protocol to Prevent, Suppress, and Punish Trafficking in Persons especially Women and Children (which entered into force on 25th December 2003) was one of the two supplementary protocols to the UN Convention against Transnational Organized Crime. Trafficking could take place by means of force, deception and abduction. For this and other reasons, the above Palermo Protocol specifically states that the victim's consent is irrelevant to the prosecution of traffickers. Although most trafficking was for the purpose of prostitution, the protocol extends protection to people who were trafficked into forced marriages or bonded labor markets, and servitude, as well as to children under 18 years of age.

129. States were required, under the Protocol (article 9) to implement comprehensive measures to prevent trafficking, amongst which measures were: (i) to organize mass media campaigns [and take social and economic initiative.], (ii) to strengthen measures to alleviate the factors that made women and children vulnerable to trafficking such as poverty, underdevelopment and lack of equal opportunity. In implementing these measures States Parties must, when appropriate, collaborate with NGOs and other organizations that had competence in the area. States Parties were also required among others, to: Provide counseling, medical and

psychological assistance to women and children who had been trafficked; Provide for physical safety of the victims; and (iii) Permit, if appropriate, the victims to stay temporarily or permanently, in the recruiting country.

130. As seen from the above the protocol integrates as a minimum, effective prevention of trafficking, with the prosecution of the traffickers and protection of Human Rights and assistance to victims of trafficking. However, there was nothing that prevents States from implementing more stringent measures than those provided for in the law. For example, they could make traffickers who were not connected to organized crime groups, criminally liable; they could pass laws that impose penalties not only on traffickers but also on customers; and they could utilize a mix of strategies to convince parents about the dangers of illegal sex trade. Information about HIV and AIDS, and legal penalties pertaining to the trade could be used to support their argument.

131. The Sultanate of Oman was a signatory to the above mentioned Convention and its two supplementary protocols. Although in 1974 Penal Code of the Sultanate Oman had provisions dealing with this crime, however, in order to be more comprehensive and effective, the Sultanate had in 2008 (under Sultani Decree No. 126/2008) promulgated the Law on Human Trafficking. In February 2009 a National Committee for Combating Human Trafficking (NCCHT), headed by the Inspector General of Royal Oman Police was established to tackle this issue.

132. The first human trafficking crime reported in the Sultanate was sometimes towards the end of last year (2008). This resulted in the arrest of a gang involved in organized white slave trade which included Omanis and expatriates, the victims being females. Before and during the trial, the said victims were provided with shelter, and after the trial sometime this year, the victims were given monetary compensation and were sent back to their respective countries in compliance with their own choice. The traffickers were penalized accordingly under the above-mentioned law of 2008. Although before this case there have been no reports of organized human trafficking (in Oman) and human organs sale, there had been concerns of issues like exploitation of expatriate labour. However, the employees got their rights when they sue their employers.

133. Briefly, the above-mentioned 2008 law penalizes those who were involved in human trafficking in any way. The penalty ranges as follow:

- Minimum 6 months to 3 years imprisonment and a fine of (not more than RO 1000) over USD\$2,500.00 for providing a cover; to the maximum of 15 years imprisonment and a fine of (not more than RO 100,000) over USD\$250,000.00 for setting up, or managing the organized group.
- The offender's funds, property or means used in committing the crime shall be confiscated.
- The victim of Human Trafficking shall be exempted from the fees of the civil case filed for compensation.

134. To the queries raised, the **Vice-President** of the Forty-Eighth session responded that, first of all on the issue of campaign and education, it was very vital to fight this crime, there was a need to get people seriously educated and make them aware of the implications. Without which, the laws and implementation would not be sufficient. Again, on the punishment of customers,

was also vital as countries had been looking only to women as involved in the trade and not tracking the men who benefit from that trade. They need to seriously address that because if the customers were not there the women would have no business. Therefore, there was a need to fashion laws in such a way that they could address these issues. In Ghana, the Criminal Offences Act, had a provision for that, but the only problem was that there must be evidence, and the law enforcers must catch the person on the premises. Though the provision remains, countries need to seriously look into it.

135. The **Delegate of Thailand** briefly outlined the significant efforts that Thailand had made in the past years, to prevent and fight against trafficking in persons, particularly women and children, and had either initiated or fully supported several anti-human trafficking measures at international, regional and sub-regional levels.

136. Although the number of ratifications of relevant international instruments, such as the UN Protocol, was, of course, one important factor in judging how successful the international community was dealing with the issue, it could not be the only reflector of worldwide strenuous efforts to prevent human trafficking. The Thai delegation believed in the additional value of genuine cooperation both at the bilateral and multilateral levels and of national strategies to combat human trafficking.

137. At the bilateral level, cooperation between countries of origin and destination was required. Thailand had recently concluded the Memorandum of Understanding on the Cooperation to combat Human Trafficking with Cambodia, Lao PDR, Vietnam and Myanmar. Those had enhanced the effectiveness of repatriation and reintegration measures, and had strengthened their effort to solve the problem. The delegation further believed that networking amongst implementing agencies of different countries played a crucial role in the success of global fight against the problem. The Thai Ministry of Social Development and Human Security had been active in cooperating with its counterparts in other countries and sharing their experience on recovery and reintegration programmes. In August 2009, they hosted a bilateral meeting with Myanmar to adopt the plan of action under the MOU between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation to Combat Trafficking in Persons, especially Women and Children.

138. At the sub-regional level, in March 2009, Thailand's Office of the Attorney General, in partnership with the Center for the Protection of Children's Rights Foundation and supported by the US Embassy in Thailand, organized the Mekong Sub-Regional Workshop on Cooperation for the Suppression of Trafficking in Persons in the Greater Mekong Sub-region and Malaysia.

139. Thailand being a signatory to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, had made strenuous efforts to review and harmonize its domestic law. He drew attention to the Prevention and Suppression of Human Trafficking Act which entered into force in June 2008. This Act served as an implementing legislation for the UN Protocol provided a comprehensive basis to cope with Human Trafficking problem in Thailand and helped make Thailand's criminal justice response to trafficking more effective in securing justice for victims of trafficking and prosecuting traffickers.

140. The delegate advocated once again the importance of genuine cooperation and effective national measures both of which have and would continue to contribute to the success of global fight against trafficking.

141. The **Delegate of Sri Lanka** thanked the panelists for their presentations. He said that Sri Lanka was considered as a source country, country of origin for illegal migrants. Sri Lankans migrate to different countries legally as well as illegally for the purpose of employment sometimes without travel documents, like fake documents, forged visas or passports. Such trends caused law and order problems as trafficking etc., and Sri Lanka had been trying to combat this by bilateral, regional and international level to suppress the trafficking in persons and people smuggling. The delegate highlighted the measures taken by Sri Lanka to suppress the crimes of human smuggling. They had effectively taken Border Control Measures to prevent illegal migration. Surveillance and security was strengthened at ports of exit. Sri Lankan Navy increased its patrols in the coastal areas to prevent people smuggling by sea. Sri Lanka Police intensified surveillance in the landside in the coastal belt. This had reduced people smuggling by sea using fishing vessels and trawlers. Sri Lanka had enacted Coastal Services Act to establish Coastal Services Units to combat people smuggling, terrorist activities, and trafficking in arms and drugs.

142. Similarly, steps were taken to enhance the integrity, security and authentication of travel documents. Passport issuing system was made more stringent and this made verification and authentication much easier. Passports contained more security features to prevent altering and tampering. Detection of forged passports and impersonation had now increased. They had strengthened their Laws and Enhancement of Punishment Their main criminal law is Penal Code which contains offences like trafficking, sexual exploitation and sexual abuse but in order to make it consistent with international instruments especially the United Nations Convention on Organized Crime and its Protocols, they had made amendments to their laws and the Penal Code In order to deter and prevent the commission of people smuggling and trafficking Penal Code and Immigrants and Emigrants Ordinance with the UNTOC and Protocol was amended and enhanced the sentencing powers of the courts.

143. Sri Lanka was in the process of enacting the law pertaining to assistance and protection of victims and witnesses. In the existing law, provisions regarding assistance and protection to the witnesses and victims of crime were inadequate. In most of the cases victims were themselves violators of laws and they were very often convicted, punished, repatriated or deported. There was a need to have schemes to rehabilitate the victims. State has to take measures to provide them with shelter, medical, education and training facilities. Short term measures were taken by the government but most of the third world countries including Sri Lanka were due to financial constraints and were unable to provide adequate support and assistance to witnesses.

144. Drawing relevance form one of the speaker's presentations, he suggested that there should be punishment of Offenders. A large number of cases were instituted in crimes such as kidnapping, abduction and rape and child abuse. However, very few cases were instituted in respect of human smuggling, though there is an increase in human trafficking. This was not

peculiar to Sri Lanka. This was due to lack of complaints, clandestine nature of crime, and fears of reprisals and shame were the reasons for the lack of prosecution and conviction. These were used to categorise States into various tiers. He hoped that such categorization shall not lead to victimization.

145. In order to regulate and combat trafficking in human beings, they had organized regular seminars and workshops, which were initiated by UN agencies especially the IOM for their technical support, were held in the recent past to improve the knowledge and develop the skills of investigators and prosecutors. At regional and international level, Sri Lanka had cooperated with other countries to combat human trafficking. Sri Lanka was signatory to SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution which was signed in 2002. Pursuant to the signing of this agreement in order to give effect to the regional Convention, Sri Lanka had enacted act No. 30 of 2005 under the same title. In the year 2008, SAARC Countries entered into a regional agreement on Mutual Legal Assistance in Criminal Matters. This was considered as a significant achievement by SAARC Countries to combat human trafficking. Similarly, Sri Lanka had ratified important UN Conventions and treaties concerning Human rights. Sri Lanka had ratified the UN Convention against Transnational Organized Crime. In order to give effect to the above convention a bill titled “Prevention of Organized Crime” was presented to the Parliament and so far not passed by the Parliament.

146. Sri Lanka ensured full cooperation to other countries to combat this crime of human trafficking. Infact, although was a source country, its citizens were ultimately victims of human trafficking because most of them were promised lucrative employments, but ultimately they were working under the extreme conditions of slavery and they were sexually abused and economically exploited.

147. The **Delegate of Myanmar** first of all extended her delegation's deep appreciation to the distinguished panelists for giving their views on Trafficking in Persons and Smuggling of Migrants. Secondly, they expressed her profound gratitude to AALCO and the Government of Malaysia for organizing this Panel discussion on a very important issue.

148. The delegate shared briefly Myanmar's efforts to fight the problem of trafficking in persons. She said that they had faced the problem of trafficking for a long time and the Government had been waging aloud campaign against human trafficking. They had steadfastly taken all necessary measures against trafficking in persons which include a national plan of action, legislation and cooperation at the bilateral and multilateral levels.

149. The National Plan of Action had been put in place since 1996. They had instituted awareness – raising campaign throughout the country, have strengthened their national legislation on prevention of trafficking by enacting the anti-human trafficking law in 2005, strict enforcement of immigration rules. The law prescribes a heavy penalty of 10 years minimum sentence to a maximum of life imprisonment for traffickers. They also were actively taking part in various regional co-operative endeavours against trafficking such as the ASEAN, Bali Process on Human Trafficking, Asia Regional Cooperation to present People Trafficking Project and Coordinated Mekong Ministerial Initiative (COMMIT).

150. At an international level, they had acceded to the UN Convention against Trafficking in Persons and the Protocol on Combating Trafficking in Persons and Smuggling of Migrants. In addition, Myanmar was a party to CEDAW and the Convention on the Rights of the Child. Cooperation between country of origin, country of transit and country of destination was very crucial. Myanmar therefore wished to cooperate closely with neighbouring countries to tackle the issue effectively.

151. The delegate said that the girl child owes a very special place in the hearts and minds of the entire Myanmar society. On these grounds, Myanmar was implementing not only preventive measures but also rehabilitative, reintegration and protection measures for those who have been victim of trafficking. As human trafficking and transnational migrant have international nature, transboundary planning and consequences, she strongly believed that it would require a coordinated and co-operative approach by the entire international community.

152. In these contexts, Myanmar attaches great importance to the role played by AALCO in initiating this issue effectively in our regions.

Vice-President in the Chair

153. The **Delegate of Japan** said that the Japanese government considered the trafficking in persons as a serious crime and a grave violation of human rights and dignity, and that a prompt appropriate response was required from a humanitarian perspective. From such standpoint, in April 2004, the Inter-Ministerial Liaison Committee (Task Force) was established at the Prime Minister's Office and the Comprehensive National Action Plan of measures to combat trafficking in persons was adopted in December of the same year.

154. The Penal code and other relevant national laws had already been amended to criminalize and punish severely all acts of human trafficking. Specifically, trafficking in persons had been prohibited and punished under the Penal Code, the Code of Criminal Procedure, the Law for Punishment of Organized Crimes, Control of Crime Proceeds and Other matters, the Employment Security Law, Prostitution Prevention Law, the Law on Control and Improvement of Amusement Businesses, the Immigration Control and Refugee Recognition Act, the Passport Law, the Law for Punishing Acts related to Child law and other statutes. The National Action Plan which was approved by the Cabinet Meeting on Anti-Crime Measures on December 14, 2004, focused on preventive measures, law enforcement and support for victims of human trafficking. Since the adoption of the Action Plan, the Task Force has continuously met and reviewed its implementation and its effectiveness in consultation with NGOs.

155. The Japanese Diet approved the conclusion of the Protocol on Trafficking in Persons on 8th June 2005. After the relevant measures were taken, the Government would ratify the Protocol in due course.

156. The delegate stated that in order to conduct consultations with the Governments concerned, Japan sent governmental teams to Thailand and Indonesia in May 2006, to Laos and Cambodia in January 2007, to the Philippines in March 2007, and to Korea in March this year.

With Thailand, a joint task force had been set up, and meetings had been held in the respective countries for cooperation for prevention, law enforcement and protection of victims. In February 2008, during the Vienna Forum, consultation meetings were held between the Japanese delegation and the delegations of the US, Thailand, Indonesia and Romania. Every year since 2002, the National Police Agency of Japan had invited representatives of police, judicial bodies and NGOs from various Southeast Asian countries to Japan to take part in “the Seminar on Combating the Commercial and Sexual Exploitation of Children in Southeast Asia”, to exchange views on how this problem was tackled in the region. The 7th Seminar was held in October 2008.

157. The Japanese government had also supported the various preventive/protective programs for trafficking in persons including through the funding to the relevant international organizations such as the UNICEF, the IOM, the ILO, the WHO, the UNDP, and the UNODC.

158. The delegate highlighted that Japan was one of the several sending as well as destination countries according to the US reports as highlighted by the previous speaker. Japan's national laws including the penal code and so many other laws had already been amended to penalize, punish severely all acts of trafficking in persons. The Japanese government had been dealing with this matter in accordance with to national action plan dealing with preventive measures, law enforcement measures, rendering support for victims of human trafficking. Since the adoption of the Action Plan, the Task Force had continuously met and reviewed in consultation with other law enforcement agencies. Japan DIET approved and has already concluded and the Protocol would be ratified accordingly after taking relevant measures into consideration. According to US report 2009, Japan is placed in tier 2, but it noted among other things that that they had made significant efforts to combat this crime and it increased the active participation in prosecution too. There was lot of emphasis on consultations with regional initiatives through cooperation with neighbouring countries in the region like Thailand, Indonesia, Laos, Cambodia, Philippines, Korea and in 2008, using the occasion of the Vienna forum, a meeting was held with delegations of Japan, the US, Thailand, Indonesia and Romania.

159. The **Delegate of the Republic of South Africa** thanked the eminent Panelists. He said that given the nature of human trafficking, that was one of the organized transnational crimes which could be traced back to the 1988 United Nations Convention against Illicit Trafficking of Narcotics and Psychotropic Substances, which highlighted the need for criminalization and extra-territorial jurisdiction, cooperation on extradition and mutual legal assistance. The Convention was followed by the Palermo Convention on Transnational Organized Crime, 2000. There was a difference between trafficking in persons and smuggling of migrants since the former was for the purpose of exploitation in any forms of exploitation such as prostitution may be transformed into any forms of smuggling of migrants for economic enrichment of traffickers and vice versa.

160. The delegate urged that State parties should ensure that criminalization of human trafficking created extra-territorial application of jurisdiction in line with the Palermo Convention. Investigations should be transnational in nature because the pieces of evidence to be put together may be found in more than one country. Therefore, this called upon the countries to cooperate with law enforcement agencies, investigations as well as in obtaining evidence. Other issues that were predicate were confiscation and freezing of assets as one weapon to find this

crime to forfeit the proceeds of crime since such money was laundered. Therefore, the fight against money laundering was linked to organized crime.

161. As is the case with the 1988 Convention, the Palermo Convention had cooperation mechanisms amongst States to fight against organized crime. These mechanisms were extradition, mutual legal assistance, including confiscation of proceeds of crime. Almost all the implementation measures, there was a need for cooperation with a view to exchanging and transferring skills amongst Member States. To this end, the Palermo Convention made provisions for technical assistance, at the United Nations level; an Open-Ended Working Group which had been established to deal with these challenges. Their cause was that developed countries would assist developing countries in that regard.

162. South Africa was a party to the UN Protocol on Trafficking in persons and Smuggling of Migrants supplementing the UN Convention against Transnational Organized Crime. The Convention places an obligation on the South African Government to create domestic laws and policies underlined with the standards set by the Protocol. In order to comply with this obligation, the South African Law Reform Commission started investigation on the problems of trafficking in persons leading to the development of a report. That report addressed three key aspects namely the prevention of trafficking in persons, prosecution of traffickers and other role-players; and the protection of the victims of trafficking.

163. South Africa utilized the following laws to prosecute the cases of trafficking in persons, the Sexual Offences Amendment Act, 2007; the Children's Amendment Act, 2007; the Basic Conditions of Employment Act, 2007; and Prevention of Organized Crime, 1998. All these legislations had provisions relating to trafficking in women and children including forms of exploitation including prostitution. The Department of Home Affairs in South Africa was also grappling with the development of a Bill to combat smuggling of migrants. However, the Immigration Act of 2002 was used to fight illegal immigration due to forged documents like passports and visas which were amongst the elements of scourge of smuggling of migrants.

164. The delegate while elaborating on the domestic laws said that the Sexual Offences Community Affairs of the prosecuting authority in South Africa have done work on the victims, some of them victims of trafficking as well. Furthermore, it was striving for the process of regional cooperation in these matters both within Southern African Development Committee and African Union. The Southern African Development Committee level, the member States had adopted a Protocol on the gender in 2008. The Sexual Offences Community Affairs of the Prosecuting Authority was aspiring for the AU Development Plan of Action which was subsequently adopted by the African Union Heads of States. They were currently working on the implementation of that Plan of Action. The Plan in essence called for the member States who have not yet ratified the African Union Protocols and their non-implementation legislation to do so. Furthermore, States were also urged to conclude cooperation agreements on extradition and mutual legal assistance in criminal matters. The coordination and cooperation of the law enforcement agencies both national and international was also very essential to combat this very nature of crimes which needs to be curbed.

165. The **Delegate of the Arab Republic of Egypt** shared the legal experience in the field of prevention and combating of human trafficking in Egypt. Methods of prevention in four points: (i) criminalization aspect, in fact, the Egyptian government recognized the importance of ratification and joining of the UNTOC Convention and its relevant protocols. It had ratified three of them and what else was important was the integration of the provisions of such treaties and Protocols into national legal framework. The current national legal framework of Egypt dealt effectively with human trafficking and emphasizes on a complete comprehensive legal treatment of such crimes for combating and prevention of human trafficking. The main aspects of the new legislation generally depended on following; to provide a comprehensive and accurate definition of crime, to criminalize all forms of the crimes as well as to provide the appropriate sanctions for such inhuman crimes. Protection of victims and witnesses stands a priority for this new legislation along with enhancing the effective cooperation which was a vital point so as to have a comprehensive legal treaty.

166. The second point was about their national efforts. They had established a national committee for combating this crime, wherein the role of the committee was to decipher some measures. Some of them were legal measures to enhance their strategy and plans for prevention and combating human trafficking. The committee played an important role to increase public awareness through education, rules, and media campaigns for the people and public against this inhuman crime.

167. The third point was prosecution, where the Public Prosecution in Egypt handles the prosecution matters. They provided high training courses for judges, prosecutors, officials from forensic department to assist and provide technical assistance. The final point was international cooperation; human trafficking has two phases, national and transnational. In transnational ones, the cooperation becomes essential. In Egypt, they dealt with aspect that there must be utmost care when they should exchange the information, especially on judicial officers, security authorities of other countries. The important point was to know the focal point of other country. The central authority guide provided by the UNODC played a vital role in exchange of information between authorities of the government. Self-assessment was very important, which was pertinent in exchange of self-assessment papers, sharing of experiences, etc that provide them with more experiences, best practices, etc. Another important point that was highlighted was the responsibility of the destination countries. Such countries had to rely on three main points; (i) try to find points of attraction of the trafficked persons like for example, how to combat illegal crimes in their countries like prostitution. This was an attraction for such crimes and protecting victims and witnesses and finally legal assistance. Confiscations of such crime proceeds were also very important because if the country manages to confiscate such proceeds, it would try to stop such crimes. The Working Group established by the Conference of State Parties to the UNODC should be emphasized. Egypt had attended the first working group in Vienna wherein there were deliberations on technical assistance.

168. The **Delegate of Nepal** thanked the panelists for their excellent presentations. The delegate said that Nepal was also a major source country for migrant workers mainly because of the push factors like political instability, insurgency and so on. There were two million migrant workers from abroad. Due to the increasing number of migrant workers, trafficking in human beings had also been exponentially increasing. The main issues to be addressed would be

prevention, protection and prosecution. The delegate specially emphasized on the coordinated strategy by harmonizing the institutional and legal provisions among the member States of AALCO and at the international level to track down the traffickers and collect evidences. On Nepal's experience in these issues, the delegate said that it shares the borders with India of 1800 kilometers. They had the methods of Joint Border Committees with the mediators including security officials, immigration officials, customs officials and other related administrative officials also who regularly at different parts of the region monitors and reports about the growing menace of human trafficking. Another point was that there was a need to have a strengthened effort at the bilateral level, by signing MoUs with destination countries to curb the trafficking in persons as well as smuggling of migrant's issues. Nepal in this regard, was trying to draft a MoU with Malaysia where there were a significant number of migrant workers working from Nepal. Nepal had been working in close cooperation at regional level too, especially within the SAARC framework and the Bali Process.

169. The **Delegate of the Islamic Republic of Iran** mainly emphasised on the root causes of these crimes which were as serious as dealing with the offenders. The root causes include the issues relating to poverty and economic betterment, therefore cooperation among community of states which emphasizes on the importance of national law based on international instruments signed by the State parties played an important role. The international community should work more than before to deal with the root causes of this heinous crime. The delegate thanked the panelists for their excellent presentations and requested AALCO to study this issue and prepare a report at the next session.

170. The **Delegate of India** also thanked the distinguished panelists for the summation of this issue in a very detailed manner. He said that they had highlighted not only the international aspects but also outlined the domestic perspectives. The delegate narrated that in India, the Ministry of Women and Child Development had formulated a national plan of Action to combat trafficking and commercial and sexual exploitation of women and children. The plan was developed in 1998, with the objective to mainstream women and child victims of commercial sexual exploitation in society. At present, the Ministry was engaged with other Ministries in the Government of India and other implementing authorities with revising that plan of action. The ministry had also issued guidelines to the State Governments for implementing this national plan of action. The Central Advisory Committee which includes national committees, NGOs, and law enforcement panels were all part of this Advisory Committee and they met regularly at the intervals of three months. The ministry had issued a Protocol on the pre-rescue and post-rescue of Child Victims of trafficking. In cooperation with the UNICEF, three handbooks had been brought out, namely, Judicial handbook on Combating trafficking in Women and Children for Commercial Sexual Exploitation, Manual for Medical Officers for dealing with Child Victims of trafficking and Counseling Services for Child Victims surviving trafficking. Training Manuals for Police and Prosecutors are being developed. India was also setting up Anti-trafficking Units in selected states in India which had been identified as sources of trafficking.

171. India was a party to the SAARC Convention and had domestic legislations to implement the Convention; India was also party to the human rights conventions which dealt with trafficking. India had also signed the UNCTOC and its Protocols. Measures had been taken to enact legislation implementing that Convention and as soon as the legislation would be in place,

India would be in a position to ratify the Convention. Number of measures had been taken to identify the root causes and issues relating to trafficking like poverty, illiteracy and the lack of proper employment and discrimination against women. Unless these were addressed, one could not reduce the menace of trafficking.

172. India had the Prevention of Immoral Trafficking Act, 1956, and there was a proposal to amend that legislation to widen the scope and focus on traffickers and the human rights of the victims and to make its implementation more effective. Proposals for the amendment were to remove the decriminalization of the acts where women involved in trafficking as victims and to criminalize and prosecute those who utilize them; and efforts have been imparted to accord training to police personnel's and to recruit more women into police services.

173. The **Delegate of Qatar**⁴ while emphasizing on the need to combat trafficking in persons from its root causes, emphasized on the need to take all legislative measures to curb and combat this menace in all its manifestations and forms. The delegate gave a brief outline of the measures adopted by the government to effectively combat this menace. Their delegation was of the view that classification by certain countries was clearly biased. On the contrary, many of the countries were taking measures to combat this crime at their domestic levels, which must be appreciated.

174. The **Delegate of Malaysia** summarized the Malaysian position that had been adequately covered by one of the distinguished speaker from the Attorney-General's Chambers. It was highlighted that there was a proposal to request the AALCO Secretariat to prepare a multilateral instrument on Mutual legal Assistance to facilitate cooperation in addressing transnational organized crime, particularly trafficking in persons as well as human smuggling. It was stated that for the ASEAN region, Malaysia was the Secretariat and were also engaged in conclusion of legal treaty on mutual legal assistance among the member States and eight member States had ratified the treaty. Therefore, in the work of AALCO Secretariat on taking up this proposal, one may refer to the ASEAN treaty. Second issue was that in facilitating the work of mutual legal assistance in trafficking in persons and people smuggling, perhaps it was very pertinent to note that cooperation was significant, wherein there was a need to recognize dual criminality within their jurisdiction. Malaysia urged the AALCO Member States which had not signed the Convention and two Protocols to be a party to them and to look at a harmonized definition covering both the issues because it is very essential to combat these crimes at national level.

175. The **Delegate of the Kingdom of Bahrain**⁵ gave a summation of his government's efforts on combating this crime. He also emphasized that there had been false classification of certain countries according to certain reports. Bahrain had been taking all legislative measures to curb and combat this menace in all its manifestations and forms.

176. The **Delegate of the Sultanate of Oman**⁶ sought the permission to take the floor again and vehemently emphasized that certain reports had made faulty classification by certain countries which may be wrong assessment and they would not be constitutional bodies either

⁴ Statement delivered in Arabic. This is the unofficial translation from the interpreter's version.

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factually correct. Those countries being named as non-complying as per those reports would also be following those international standards as per their domestic legislations and were doing justice to their workers. Hence, such non-factual classification should not be followed.

177. The **Delegate of India** also reiterated that on the proposal on the mutual legal assistance treaty, in 2008, at the SAARC Summit, the SAARC countries have signed treaty on mutual legal assistance in criminal matter wherein the ASEAN Agreement, the UNODC Model and the Harare principles could be used as the model.

178. The Vice President then opened the floor for the observations by the Observers.

179. The **Observer from Algeria**⁷ mainly asked these following questions, namely first, that so many parts of the world there was close phenomenon of terrorism and the smuggling of the migrants, and in this regard, in Asia was there any framework for consultation and cooperation to resist the effects of the danger and this menace.

180. Second question, was that it would not be possible to take measures to combat trafficking, if they were confined to the drafting and signing of the convention. It was essential that one must look forward to give the practical character to the contents of our text. December 1999 convention, most of the developed countries refused to sign – or should we go for drafting other text that was the policy that Algeria followed with the European countries which are adjacent to their area.

181. The queries were well responded by the Indonesian Panelists. On the first question, as to whether terrorism also relate to smuggling of migrants and trafficking in persons, there were 13 conventions relating to terrorism, and most of the countries were parties and are required to be a party to these conventions. However, in relation to migration, there could be linkages and there were possibilities in this regard but there were no direct references to this issue. On smuggling of migrants, the Bali Process stood very significant.

182. The **Observer from the United Nations High Commissioner for Refugees (UNHCR)** speaking on behalf of the UNHCR stated that various border control measures had been incorporated enlisted in the entire international legal instruments, the Bali Process and so on. However, there was a need to address about the number of missing people in the region. In Asia, there was enough forced displacement incidents, people move from one place to another for various reasons. During these transits, they may face reprisals, the victims needed more protection and there must be access to justice. Addressing root causes remained an important issue.

The meeting was thereafter adjourned.

⁷ Statement delivered in Arabic. This is the unofficial translation from the interpreter's version.