

**VERBATIM RECORD OF THE  
RECONVENED FIFTH GENERAL  
MEETING HELD ON FRIDAY, 6<sup>TH</sup>  
JULY 2007 AT 10.00 AM AND 4.30 PM**

**Her Excellency Mrs. Brigitte Sylvia Mabandla, President of the Forty-Sixth Session in the Chair**

**A. WTO as a Framework Agreement  
and Code of Conduct for World Trade**

As the Meeting was behind schedule and as the issues had been extensively discussed during the Special Meeting on "International Investment, Trade and Development" held on 4 July 2007, Secretary-General suggested that the item on 'WTO as a Framework Agreement and Code of Conduct for World Trade' could be considered as non-deliberated. However, he requested the Member States to submit the written statements to the Secretariat for being reflected in the Records of the Forty-Sixth Session.

**Statements submitted to the Secretariat  
on this item**

**The Delegation of the People's Republic of China:** Madam President, China has been playing a constructive role in Doha Development Agenda (DDA) in a manner of active participation. We believe that the successful conclusion of DDA would be conducive to strengthening the multilateral trading system, promoting the sustainable and balanced development of global economy and realizing mutual benefit and win-win outcome. China attaches great importance to DDA and has made positive contributions to the progress of negotiations by participating in a comprehensive way. During the WTO Ministerial Conference in Hong Kong in December, 2005, China acted as an important channel of communication among different parties, which contributed a lot to the process. Currently the Doha Development Agenda negotiations are at a crucial stage. China will continue to support and promote the progress of the negotiations. As international trade protectionism reemerges in recent years, the member countries should treasure and

constantly improve the multilateral trading system.

Madam President, the focus of DDA is development in essence. The success of DDA, to a large extent, depends on the solution of the development issue. The Doha Round talks should truly reflect the objectives of the Development Round. Since the conclusion of the Uruguay Round talks, the wealth gap between the developed countries and the developing countries has been further enlarged. A new round of talks should be beneficial to the settlement of the current imbalance of the economic development of the world, allowing the developing member countries to get benefit from the result of the negotiations. In particular, the developing member countries should have more market access opportunities.

Madam President, It is well recognized that China, as a new member of WTO, has made magnificent efforts to the multilateral trading system. China will continue to make positive contribution in DDA according to its economic development and capability. Despite that the applied tariff is aligned with the bound tariff, China still positively participates in the negotiations on tariff reduction and played a bridging role in the negotiations. This represents both the development spirit of the Doha Round and also the open spirit to promote the advancement of the multilateral trading system. As a major developing country with 700 million peasants, the issue of agriculture is vital in China. After its accession to WTO, China has already expanded its opening-up sectors in the agricultural field according to its commitments. Hence, in this round of negotiations, China's particular concerns on certain agricultural products shall be properly guaranteed. Thank you for your kind attention.

**The Delegation of the Republic of Indonesia:** Madam President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, In this opportunity my delegation would like to make a few remarks on some issues relating to implementation WTO as a legal

Framework Agreement and Code of Conduct for World Trade.

The establishment of The WTO, eleven years ago raised our hopes that it would, apart from challenges, create unprecedented opportunities for its member countries. Indonesia experience showed that many international provisions of trade are not in our favor. Many of them do not reflect the concern of our country as one of the developing countries. On the other hand, we need to transform WTO provisions to our national Laws and regulation for serving the purpose of multinational companies coming from developed countries.

Madam President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, the developing countries participate in the multilateral trading system in the hope that this would lead to their economic development and not because trade liberalization is an end in itself. The system has to meet this expectation. Effective measures are needed to make trade work as an engine of growth and human development. Given the differences in levels of development and the ability of countries to assume obligations, it is imperative to ensure that equal rules do not apply to unequal players. The multilateral trading system has to acknowledge that developing countries cannot afford to travel at the same speed as developed countries to achieve gains. Therefore, obligations to be undertaken by the developing countries should not arise out of coercion.

In order to secure sufficient gains from globalization for developing countries, there is an urgent need to bring down the high tariffs and non-tariff barriers on products of export interest to developing countries. It remains our duty to ensure that *special and differential treatment* for developing countries and policy to deal with sensitive products remain an integral part of all elements of Negotiations. It may be recalled that all special and differential treatment provisions in the WTO Agreements shall be reviewed by strengthening them and making more precise, effective and operational.

Madam President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, the WTO Hong Kong Ministerial Conference in December 2005, which adopts a moderate Declaration, tends to set the Doha Development Round "back to track". Even before the Hong Kong Conference, there was less expectation among the negotiating States about the outcome of the conference. After the failure of the Cancun Ministerial Conference, the Member States were trying hard to bring the Doha Development round of negotiation into track.

Although some interests of developing countries have been accommodated in the Hong Kong Conference, the Hong Kong Conference after six days of intense negotiations did not contain specific numbers and formula structures for cutting subsidies and tariffs. Instead, the Ministers agreed on some general parameters to guide the development of these "full modalities" on agriculture and non-agricultural market access (NAMA), and set themselves an April 2006 deadline for finalizing them.

We observed that the negotiation on agriculture remains the central issues in the Hong Kong Conference. The level of ambition set by the Doha mandate continues to be the basis for the negotiation on agriculture. It was decided that the final balance would be found only at the conclusion of the subsequent negotiations and within the single undertaking. To achieve this balance, the modalities to be developed would need to incorporate operationally effective and meaningful provisions of special and differential treatment for developing country Members. Agriculture is one of critical importance to economic development of developing countries Members and they must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns.

Indonesia, along with G-33 proposed that developing countries be given flexibilities in applying some tariff lines as SP3 product based on the indicator related to food

security, livelihood security and rural development needs.

Madam President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, equally important is the issue of market access for non-agricultural products. We give particular attention to the annex B of the 2004 "July Package" which is the current basis of negotiation. It is less specific than the agriculture text, simply placed an additional paragraph outlining developing countries concerns, which relate to the tariff reduction formula, the starting point for binding unbound tariff lines, flexibilities for developing countries, and participation in sectoral initiatives. The developing countries should have longer implementation periods for tariff reductions.

With regards to the recent development at the Ministerial Meeting of G-33, G-20 and NAMA 11 conducted in Geneva on June 11, 2007, Indonesia urges that the final result of the Doha Round should reflect the balance and accommodate the aspiration and development interests in developing countries. Furthermore Indonesia reiterates its position that co-efficiency 10 for developed countries and co-efficiency 15 for developing countries are not acceptable since extreme liberalization are beyond the capacity of developing countries.

Madam President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, Indonesia urges this Conference to reflect on the current situation and to compare it with the lofty goals set at Hong Kong Conference of 2005. Indonesia urges this Conference to begin to genuinely work to achieve those goals. It is important to recognize the need to rectify WTO legal framework and the conduct for world trade. The Asian and African countries through AALCO should agree on the common ground of what should be done and the objectives obtained. In so doing, we put high expectations that our participation in a rules based multilateral trading system would result in securing a fair share in the growth in international trade, commensurate with the needs of our economic development.

Finally, my delegation places specific concern on the effort of the Asian-African lawyers in order to enhance the capacity building on the WTO's issues, especially the dispute settlement mechanism. In this regard, my delegation proposes that in the near future, AALCO can organize a legal training for Asian-African lawyers, in collaboration with the WTO or UNITAR. My delegation believes that the endeavor can make significant contribution toward the empowerment of the Asian-African States in the WTO forum. I thank you, Madam President.

**The Delegation of Malaysia:** Madam President, His Excellency the Secretary General, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

Malaysia accords its appreciation for the continued efforts of the AALCO Secretariat to keep the Member States informed of developments in WTO negotiations.

On her part, Malaysia has continued to be actively involved in the deliberations of all issues arising from the Doha Round and has in particular engaged WTO Members on specific areas of concern and interest. This has been reflected by the fact that Malaysia is holding the chairmanship of the General Council, the highest decision-making body under the WTO.

Although the Doha Round was intended to provide an avenue for WTO Members to improve the rules and procedures within the multilateral trading system, however, the vested interests of WTO Members have stalled the process and hindered the review process despite best efforts of certain Members. Therefore, we commend the success of the Hong Kong Ministerial Conference which benefited from the commitment and political will of WTO Members to partially at least resolve some of the outstanding issues.

Madam President, We regret to note that agriculture was used as a "Sword of Damocles" over the delegates by certain WTO Members which hampers progress. In the process, certain hard compromises had to be made by the developing

countries. However, the sacrifices of the developing countries enabled the process to move forward. Positive results achieved at the Hong Kong Ministerial Conference was the imposition of timelines for the conclusion of negotiations on the various issues. Nevertheless, the issue of the review of the Dispute Settlement Understanding which is not bound by any time line still remains unresolved.

Malaysia is of the view that the negotiations on agriculture as well as Non-Agriculture Market Access (NAMA) are critical to the conclusion of the Doha Development Agenda. There is a need to see serious substantive engagement by all WTO members in the multilateral process in Geneva, with constructive inputs and a real willingness to negotiate, which means, of course, defending their positions, but also showing the necessary flexibility. The multilateral process will obviously greatly benefit from input coming from smaller group discussions.

Hence, strong commitment and political will from all WTO Members need to be garnered in order to ensure the success of the Doha Round. Malaysia acknowledges that there has been some positive movement in the negotiations with Members indicating genuine commitment and interest to explore possible ways to find common ground on various contentious issues. Gains would also accrue to developing countries by making the Special and Differential Treatment provisions more precise, effective and binding. In the ultimate analysis, the S&D provisions must respond to, and be reflective of, the concerns of developing countries, and especially the least-developed countries amongst them.

As far as negotiations on agriculture are concerned, to rebalance the multilateral trading system in favour of developing countries, there has to be "effective cuts" in trade-distorting agriculture subsidies in developed countries. There needs to be elimination of the most damaging type of subsidies: export subsidies by 2013, with a substantial part to be eliminated by 2010. It also has to deliver improved market access, including on South-South trade, through

the reduction of tariffs and removal of quantitative restrictions, especially on products where developing countries have a comparative advantage.

It is believed that in order to realistically conclude the Doha Round by December 2007, agreement on modalities would have to be reached by the end of July 2007 to allow preparation of necessary legal texts and schedules of concessions for each country. On the opening up of agriculture markets, Malaysia is hopeful that the developed countries would improve their offer, and the emerging economies would be afforded with protection which they are entitled albeit this does not mean that no further opening will take place.

For negotiations on NAMA, Malaysia is encouraged that Members are taking necessary actions to close gaps and build bridges between Members' divergent positions particularly on core issues of modalities of tariff reduction formula. In this respect, reaffirming DG Pascal Lamy's aspiration in his speech on 8 June 2007, the WTO Members need an additional effort from the United States of America to improve its offer whilst the European Union (EU) and Japan should also be able to follow.

Madam President, The Doha Development Agenda is the biggest challenge for the WTO since its creation in 1995. It is a challenge to achieve what was started in the Uruguay Round: a more level playing field in areas of particular interests to developing countries, such as agriculture. It is a challenge because it touches the edge of some of our Member's most entrenched interests. It will therefore take a great deal of political courage and commitment to conclude this Round successfully.

Malaysia is optimistic that the commitment and political will shown by the WTO Members during the Hong Kong Ministerial Conference would continue to facilitate and advance negotiations on the outstanding issues and enable these issues to be satisfactorily resolved within the agreed deadline of 2006. This is a test of the credibility of the WTO, and its ability to deliver on its promises to developing

countries. This is also a test of the global community's willingness to turn their talk of international cooperation and policy coherence into meaningful results. And a test of whether or not we can construct a truly "global" trading system, where all countries benefit. Thank you.

**The Delegation of the Sultanate of Oman:** About two thirds of the WTO's (around 150) members are developing countries. They play an increasingly important and active role in the WTO because of their numbers, because they are becoming more important in the global economy, and because they increasingly look to trade as a vital tool in their development efforts. Developing countries are a highly diverse group often with very different views and concerns. The WTO deals with the special needs of developing countries in three ways:

1. The WTO agreements contain special provisions on developing countries
2. The Committee on Trade and Development is the main body focusing on work in this area in the WTO, with some others dealing with specific topics such as trade and debt, and technology transfer
3. The WTO Secretariat provides technical assistance (mainly training of various kinds) for developing countries.

Regarding the special provisions, the WTO agreements give developing and least developed (LCD) countries special rights or extra leniency "special and differential treatment" ( S&D) treatment. Among these are provisions which allow the developed countries to treat the developing countries more favorably than other WTO members (enabling clause).

Enabling clause is the WTO legal basis for the Generalized System of preferences (GSP). Under the GSP, developed countries offer non-reciprocal preferential treatment (such as zero or low duties on imports) to products originating in developing countries.

The General Agreement on Tariffs and Trade (GATT, which deals with trade in goods) has a special section ( part 4) on trade and Development which include

provisions on the concept of non-reciprocity in trade negotiations between developed and developing countries- when developed countries grant trade concessions to developing countries they should not expect the developing countries to make matching offers in return.

Other measures concerning developing countries in the WTO agreements include:

1. Extra time for developing countries to fulfill their commitment (in many of the WTO agreements)
2. Provisions designed to increase developing countries' trading opportunities through greater market access ( e.g in anti-dumping, safeguards, technical barriers to trade)
3. Provisions requiring WTO members to safeguard the interests of developing countries when adopting some domestic or international measures (e.g in anti-dumping, safeguards, technical barriers to trade)
4. Provisions for various means of helping developing countries ( e.g dealing with commitments on animal and plant health standards, technical standards, and strengthening their domestic telecommunications sectors).

The WTO secretariat has special legal advisers for assisting developing countries in any WTO dispute and for giving them legal counsel. The service is offered by WTO's training and Technical Cooperation Institute.

The least- developed countries receive extra attention in the WTO as follows: at the meeting in Singapore in 1996. In 2002, the WTO adopted a work programme for least-developed countries. It contains several broad elements: improved market access; more technical assistance; support for agencies working on the diversification of least-developed countries' economies; help in following the work of the WTO; and a speedier membership process for least-developed countries negotiating to join the WTO.

A number of WTO members also provide financial support for ministers and accompanying officials from least-

developed countries to help them attend WTO ministerial conferences.

Oman has been practicing liberal, open, economy with very low tariffs for many years long before the establishment of the WTO. Therefore, Oman's entry into WTO .

Oman joined the WTO in November 2000. This was followed by a string of free trade agreements and negotiations for F.T.A.s on a bilateral, regional and multilateral basis for trade-liberalisation and trade expansion. The first to be put into practice was the Gulf Customs Union (GCU) and Free Trade Area of the Six gulf States in 2003. GCU besides establishing an internal free trade area for the Member Countries, set up a customs union with a common external tariff of 5% on all goods imported by GCC countries. The next to follow and encompassing a wider region was the Greater Arab Free Trade Area (GAFTA) (Members to are oman+16 other Arab countries only, (only goods not services) that finally came into being, at the end of a series of phased duty reductions. This covered the entire merchandise trade between Oman and the other member countries representing 94% of inter-Arab trade. In 2006 Oman achieved yet another milestone with successful conclusion of the bilateral Free trade Agreement with United States. The Oman –US FTA, the first bilateral FTA for Oman, is expected to eliminate tariff duties on all industrial and most agricultural products (with some special protection for select agricultural products of Oman) between Oman and US and provides a 10 year grace period to exempt a certain quota of Omani exports from customs tariffs thereby providing a big boost to textiles and readymades. In the field of services Oman made commitments to open up banking, insurance, telecommunications, professional and business services, construction services, educational/health services, distribution services etc.

Separately, at the GCC level, Oman and other Member countries are actively pursuing FTA negotiations with a number of countries/economic blocs among them EU, China Japan, Singapore, India, Pakistan. Some of these negotiations have reached an

advanced stage and the GCC-EU-FTA is expected to be finalized soon. However,, while allowing entry to foreign services suppliers limitations and restrictions have been placed on them to protect Oman's interests.

WTO members have agreed that if one or more members believe that fellow members are violating trade rules they will use the multilateral system of settling dispute. A third group of countries can declare that they have an interest in the case and enjoy their rights. Disputes in the WTO are essentially about broken promises. The system is based on clearly defined rules, with timetables for completing a case. First, rulings are made by a panel and endorsed (or rejected) by the WTO's full membership. Appeals based on points of law are possible. However, the priority is to settle dispute through consultations rather than to pass judgments.

Although much of the Dispute procedure resembles a court or tribunal, the preferred solution is for the countries to settle the Dispute through consultations between the governments, and even when the case has progressed to other stages consultation and mediation are still always possible.

At the fourth Ministerial Conference held in Doha, Qatar in November 2001, the Ministers had agreed to negotiate on improvements and clarifications of the DSU and said the negotiation process on improvements and clarifications of the DSU shall take place in the special Session of the DSB and shall complete the review not later than May 2003.

The Chairman of the Special Session, on 28 May 2003, circulated a draft legal text which contained Members proposals on a number of issues, including: enhancing third-party rights; introducing an interim review and remanding at the appeals stage; clarifying and improving the sequence of procedures at the implementation stage; enhancing compensation; strengthening notification requirements for mutually-agreed solutions; and strengthening special and differential treatment for developing countries at various stages of the proceedings. However, the Chairman's

Text failed to reflect a number of other proposals by Members due to the absence of a sufficiently high level of support.

The General Council at its meeting on 24 July 2003, agreed to extend the negotiations from 31 May 2003 to 31 May 2004. The Cancun Ministerial Conference, which was supposed to review the progress in the negotiations in the Special Sessions of the DSB, failed to do so, as there was no consensus among the Members.

The discussion at the Special Session of July 2004 allowed a very constructive exchange of views and led to a clarification of many aspects of the proposed text. However, the further work of the Special Session, the onus will remain on participants in the negotiations to continue to develop areas of convergence so as to lay the basis for a final agreement to improve and clarify the DSU. In fact the negotiation on DSU review are effectively on hold, because of the pressing areas of the ongoing talks such as Agriculture, NAMA and Services.

The WTO Director General Pascal Lamy in his speech to the G-8 Summit Germany on 8<sup>th</sup> June 2007 said that an interim Doha agreement is now "within reach" and asked G-8 for "added political effort" to spur Doha Agreement.

Ladies and gentlemen, I recommend that developing and least developing countries need to build alliance. For we can see that the legal text, as the improvement of DSU failed in 2003 because of lack of sufficient high level support; and in 2004 decision the General Council adopted recommendations which include this "the onus will remain on participants to continue to develop areas of convergence so as to lay the basis for final agreement to improve and clarify DSU. Thank you all for listening

**The Delegation of the State of Kuwait\***: State of Kuwait joined the WTO in January 1995 as a founder Member and signed all

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\* Due to the paucity of time at the Session Statement in Arabic was handed over to the Secretariat and deemed to be read. Unofficial translation by the Secretariat.

the Agreements of the Marrakesh final documents. Since then the Council of Ministers has established a National Committee to follow up the implementation of these agreements.

The Government in its keenness to attract foreign investments started to rationalize very positively its economic policy giving more room to privatization. The Government consequently enacted Investment Law in 2001 giving a great deal of privilege to foreign investments. Moreover, the Government of Kuwait is on its way to enact more decisions and measures to provide a suitable economic field for investors. On the other hand, the Government of Kuwait has enacted a law allowing foreign investors to buy shares of local companies dealt with in the stock market.

One of the main steps in the Economic Development was negotiating with a number of Arabic countries and friendly countries agreements for free trade, and accomplish regional economic development by establishing one market and an economic union with Members of Gulf Council Member States.

One of the main aims of Kuwait to adhere to WTO was to know-as a developing country-its rights and to struggle to obtain them as well as knowing the mechanism to defend these rights.

## **B. An Effective International Legal Instrument against Corruption**

**The President:** The next item on the agenda is "An Effective International Legal Instrument against Corruption". May I invite Dr. Xu Jie, Deputy Secretary-General of AALCO for his introductory remark.

**Dr. Xu Jie, Deputy Secretary-General of AALCO:** Madam President, Distinguished Ministers, Vice Ministers, Excellencies, Ladies and Gentlemen. It is indeed my honour to introduce the topic "An Effective International Legal Instrument Against Corruption" contained in Secretariat Document AALCO/46th/CAPE TOWN SESSION/2007/S 11. The Report before

you provides a brief overview of the developments in the implementation of the UN Convention against Corruption (UNCAC) 2003 and the Report on the First Conference of the States Parties (CoSP) to the UN Convention against Corruption.

It may be recalled that the Secretariat, as mandated by the resolutions adopted at the Forty-third and Forty-fourth Sessions of AALCO, had prepared and presented to the Member States two books, namely, *Combating Corruption: A Legal Analysis* (in 2005) and *Rights and Obligations under the United Nations Convention against Corruption* (in 2006) with a view to provide an in-depth analysis of the international anti-corruption instruments, specifically the UN Convention against Corruption and a detailed analysis of the nature of obligations of Member States while implementing the principles embedded in the Convention against Corruption into their national jurisdictions. The Member States while welcoming the publications, had appreciated the Secretariat for their efforts in assisting them in implementing the obligations under the Convention.

Madam President, the UN Convention against Corruption which entered into force on 14 December 2005 has presently 140 signatories and 93 parties. The entry into force of the Convention is indeed a defining movement in the history of international anti-corruption efforts. This Convention would indeed become the global standards for a strong international anti-corruption regime, and its adoption marks the larger trend towards greater international regulation of corruption in public and private life.

However, much needs to be done to realize the objects and purpose laid down in the Convention. First and foremost is to ensure that the Convention is effectively implemented and the failure to address this issue in the current text is the most serious shortcoming of the Convention. At the first Conference of States Parties to the UN Convention against Corruption held in Jordan, December 2006, the States were only able to establish a Working Group on

Review of Implementation appropriate mechanism or body to assist in the effective implementation of the Convention.

The other two issues which are of great importance especially for the developing countries are the issues of Asset Recovery and Technical Assistance. The Conference was successful in establishing two Working Groups - on Asset Recovery and on Technical Assistance, to advise and assist the Conference in the implementation of its mandate on the return of proceeds of corruption and on technical assistance. I hope, during this Session, the Member States of AALCO could reflect on their position and share their experience and recommendations on these issues which could be presented before the Working Groups for further deliberation and action.

Madam President, in this context, we endorse the recommendation by some of the AALCO Member States during the last two Sessions, the establishment of a Group of Legal Experts from the AALCO Member States to prepare a Model Law in line with the UN Convention against Corruption, so that the objectives of the Convention could be implemented at the national level. The Group of Experts could not only help complementing the work of the three Working Groups established by the Conference but also could bring forth a common understanding among the Asian and African countries on these issues, with an objective of drafting a Model Law for national implementation. I hope the Member States would consider this recommendation and provide the Secretariat with suitable direction/ mandate during this Session.

Finally may I conclude that the challenge facing the international community now is to ensure that the obligations under the Convention are implemented in letter and spirit by both the developed and developing countries. It is the will of all the States to cooperate among them against this crime, which would determine the ultimate success of the Convention. Thank you all for the patient hearing.



**President:** Iran you have the floor.

**The Delegate of the Islamic Republic of Iran:** Thank you Madam President. In the Name of God, the compassionate, the merciful. The adoption of UN Convention against Corruption signals an important step forward in controlling the menace. It is an indicative of an international consensus that corruption is no more a local crime and that it is a crime with transnational dimensions. Therefore, all states shall work together to prevent and combat it in a comprehensive manner.

Islamic Republic of Iran is a signatory to the UN Convention against Corruption. The legal procedure for ratification of the Convention by the Parliament has been already in progress and the final decision to ratify it is to be made. My country had an active role in the process of negotiation of the Convention and is very eager to see the full implementation of this unique legal instrument. We believe that the Convention provides an effective legal framework for multilateral cooperation against corruption, including through mutual legal assistance for confiscation and extradition of illegally acquired assets. Since asset recovery and restitution of proceeds of crime to their legitimate owners is a fundamental principle of the Convention, necessary measures shall be taken to make this principle materialize.

Islamic Republic of Iran, as a Member State of the Organization of Islamic Conference (OIC) and Economic Cooperation Organization (ECO), has major role in regional interactions in fighting against different forms and manifestation of corruption. Accordingly, Islamic Republic of Iran has actively participated in the First OIC Anti Corruption and Enhancing Integrity Forum (Kuala Lumpur, 28 – 30 August 2006) and wishes to host the Second Forum in Tehran in 2007. Moreover, in The First Meeting of the ECO Ministers for Interior, held in Tehran on 1st November, 2006, Member

States acknowledged that transnational organized crimes and some corrupt activities such as Money laundering posed them a common concern and they must fight them jointly. They agreed to set up a High Level Experts Group to prepare a comprehensive cooperation plan to launch a coordinated and organized campaign against crimes.

Madam President, my delegation is of the view that the development of globalization and frequent exchanges has been providing a space for transferring of illicit money to other countries by criminals, which have been a big obstacle of punishing corrupt crime of every country. Illicit assets indicate the assets that the criminals acquired by committing corrupt & criminal activities and the benefits brought about from the activities. It includes illegal incomes, properties, facilities or other tools, and the benefits generating from these assets, such as interests, coupons etc. Recovering illicit assets is the important measure and procedure for the law enforcement agencies of a country to obtain evidence of a corrupt crime, the important measure of protecting public interest, resuming rule of law and maintaining fair justice, and as well the need of keeping corrupt crime within limits and promoting harmonious development of human society.

Madam President, my delegation believes that recovering proceeds of corruption is one of the key elements in dealing effectively with corruption and has become a significant issue for many States especially developing countries. The illegal misappropriation of funds undermines foreign aid, drains currency recourses, reduces the tax base and increase poverty levels. And it is necessary to recover and restore the assets illegally transferred from the country of origin.

Accordingly, all of the State Parties and signatory States should pave the way for realization of asset recovery in different

stages: investigative measures to trace the assets; preventive measures to immobilize the assets; and confiscation. Further, legal proceeding for complying with these stages may be instituted in jurisdiction where the offence took place, in the jurisdiction where the assets are located or in both places simultaneously.

Madame President, asset recovery has consistently emerged as a top priority in various consultations and deliberations on corruption. Effective asset recovery will help countries redress the worst effects of corruption, while sending a strong message to corrupt officials that there will be no place to hide their illicit assets. It is thus crucially important that we recognize UNCAC provides effective way for international community to trace back the illicit assets and we need to overcome the practical problems that hamper recovery of the proceeds of corruption may vary depending on the countries involved and may generally be attributed to the following: the absence of the political will among State Parties, weaknesses in the prevention and control of money-laundering, loopholes in legal frameworks and a lack of expertise, capacity and resources to successfully trace, freeze and confiscate assets both domestically and internationally. States Parties should adopt laws and procedures to detect, recover and return of assets of illicit origin and to return them to their countries of origin and deny safe haven to those who are engaged in high level corruption and who illicitly acquire assets.

States Parties should attain and implement the highest international standards for transparency and the exchange of information for the implementation of the chapter 5 of the UNCAC on asset recovery.

Madam President, as you are fully aware, the United Nations Convention against Corruption provides a comprehensive framework for concerted action by States Parties to prevent and control corruption at

the national level and to cooperate at the international level. And one of the purposes of the Convention in terms of Article 1 is:

- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery.

Accordingly, I would like to reiterate that implementation of the Conventions is an interconnected process, that means eight chapters of the Convention should be implemented comprehensively.

Playing the significant role in different areas of full implementation of UNCAC, technical assistance should be coordinated in ensuring that overlapping is avoided and resources are used effectively.

Madam President, the Islamic Republic of Iran, as a signatory of UNCAC, has taken a series of steps on training of different governmental institutions. In this regard, the Iranian A workshop on the review and identification of legislative capacity and capabilities of judiciary against corruption convened in Tehran on 2 to 3 August 2006. In latter workshop, different participants from Executive, Legislative and Judiciary branches participated, deliberated and considered, within the three working groups, various dimensions of UNCAC and its implementation in Iranian governmental system.

Madam President, as it could be induced from previous experiences, suppression of manifestations of corruption, though necessary, would have very limited effect in controlling the problem. Fighting corruption requires the identification, and then elimination, of its underlying causes and/or breeding grounds. For example as long as there are defective laws and regulations which breeds corruption, the enhancement of supervisory and judicial bodies and/or aggravating punishments could not be effective in fighting

corruption. The same is true when due to national and/or regional economic conditions, illicit trafficking in specific categories of goods into or from a country is highly profitable. It is obvious that the expansion of law-enforcement maneuvers across borders and the arrest and punishment of traffickers would not have much effect in controlling the phenomenon.

The Islamic Republic of Iran's new campaign against corruption began with the issuance of Eight Article Verdict by the Supreme Leader in 2001. The most notable elements of the new anti-corruption strategy are: Establishment of a Headquarter for Fighting Economic Corruption, Prioritization of anti-corruption efforts among active elements of the Iranian society, Development of a national program for promotion of integrity in administrative system, Privatization of state-owned corporations and/or economic institutions and Adoption of anti-corruption laws

Madam President, the Islamic Republic of Iran, during the First Session of Conference of the State Parties to the United Nations Convention against Corruption (Dead Sea, 10-14 December 2006), had active participation and Supported the resolutions adopted by the Conference of the States Parties to the UNCAC.

The Islamic Republic of Iran desires to have very active participation in various working groups, established by Conference of the States Parties to the UNCAC, on "Review of implementation", "Asset Recovery" and "Technical assistance", for making recommendations to the Conference of the States Parties at its second session to be convened in Indonesia.

Madam President, fighting corruption is the responsibility of all states, developed or developing. We have to shoulder the responsibility to fight this fatal cancer and

cooperate more closely to that effect. It is also expected that the developed countries, generally the destination of much of illegally acquired assets, adopt strict measures against illegal transactions, on the one hand, and facilitate their recovery and return to the countries of origin. Corruption will not be overcome unless international and regional participation and cooperation is warranted. I thank you, Madam President,

**President:** Qatar you have the floor.

**The Delegate of the State of Qatar\*:** Thank you Madam President. In the Name of God, the compassionate, the merciful.

Corruption is a fatal disease which affects the humanity since the early times of history. It takes different forms and manifestations thus leading to different results of corruption on earth. Today humanity is suffering from the spread of corruption as it has become a phenomenon which causes concern to the people and states as well as apprehension which should be confronted. During the past decade, there was an increase the spread of corruption on the local, regional and international level has witnessed. Corruption is multifaceted and its ways and means are ramified to the extent that it is found in most economic and political systems, either the rich or the poor. The spread of corruption has deplorable index with hamper the process of development, particularly in the least developing countries, and has contributed to impeding the steps of reforms, support of democracy in many countries. Corruption is about to overcome political legality, effects the political stability and security in many parts of the world.

The most outstanding efforts in combating corruption at the international level are the following: UN Transnational Organized Crime, and second, the UN Convention against Corruption.

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\* Statement made in Arabic. Unofficial translation from the interpreter's version.

Qatar on the 12 of December 2006 signed/acceded to the UN Convention against Corruption of December 2005. Qatar is also a founder of the Group of Offices for the Financial Procedures for the Middle East and North Africa and formed in November 2004 as a voluntary association to combat money laundering and funding of terrorism. In the domain of money laundering, the Central Qatari bank play's a leading role in implementing decrees on money laundering. The Committee of Money Laundering, which has been formed according to these legislations are concerned with money laundering.

**President:** Indonesia, you have the floor.

**The Delegate of the Republic of Indonesia:** Madam President, Excellencies, Distinguished delegates, Ladies and Gentlemen,

Corruption is one of the greatest threats that the world has been facing during the last decades and it falls under the category of extra-ordinary crime. It has not only violated national borders and jurisdictions of States, but has also posed political, economic, financial & socio-cultural challenges to the international community, including the Asian and African Region. Corruption undermines democracy, ethical values, justice and the rule of law. It destabilizes governments, taints, public service and can in the long run deepen poverty, as well as further jeopardizing sustainable development in the long term.

Against this backdrop, my Delegation would like to urge all Asian-African countries to intensify regional cooperation to deny safe haven to officials and individuals guilty of corruption, those who corrupt them and their illicitly-acquired assets, and to prosecute those engaged in bribery, including in international business transactions. Indonesia further agrees that the implementation of the principles of the United Nations Convention against Corruption can have a positive impact in advancing our commitment towards a cleaner and more honest and transparent community in the Asian-African region. In addition, Indonesia has already ratified the

United Nations Convention against Corruption on 21st March 2006 by Act Number 7 of Year 2006.

In this connection, we appreciate the efforts taken by the AALCO Secretariat to publish a guideline book outlining the details of the rights and obligations of the state parties to the convention.

Madam President, in this regard allow me to take this opportunity to give elaborations on four fundamental issues contained in the United Nations Convention against Corruption which must be implemented by the State Parties' to the Convention.

Firstly, Corruption can be prosecuted after the fact, but first and foremost, it requires prevention at both the public and private sectors. Hence, Indonesian Delegation is of the view that States must endeavor to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, particularly in the critical areas of the public sector, such as the judiciary and public procurement.

For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it. Article 5 of the Convention enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption.

Secondly, Indonesian delegation is of the view that the Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and

obstructing justice, are also dealt with it. Convention offences also dealt with the problematic areas of private-sector corruption. Therefore, my delegation would like to urge countries to adapt its national legislation by inserting the contemporary criminalization of kinds of corruption offences and practices.

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

Fourthly, the most important aspect of the Convention is that it creates a new breakthrough by creating an asset-recovery mechanism. This is an important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new government.

Several provisions specify how cooperation and assistance will be rendered. Particularly, in the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it; in the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting state; in all other cases, priority consideration would be given to the return of confiscated property to the requesting state, to the return of such property to the prior legitimate owners or to compensation of the victims.

Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption while sending at the same time, a message to corrupt officials that there will be no place to hide their illicit assets. Accordingly, Article 51 provides for the return of assets to countries of origin as a fundamental principle of this Convention. Article 43 obliges State Parties to extend the widest possible cooperation to each other in the investigation and prosecution of offences defined in the Convention. With regard to asset recovery in particular, this article provides inter alia that "In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties".

Madam President, in responding to the problem of corruption, domestically, Indonesia has been undertaking extensive measures to reduce the incidence of corruption as well as to improve and strengthen institutional capacity and the legal infrastructure. The current "United Indonesian Cabinet" gives high priority to improve governance, including combating corruption. As stipulated by the People's Consultative Assembly's Decree No.XI/1998, combating corruption constitutes a national commitment and borne out by subsidiary laws and regulations such as Law No.28/1998 on State Executors Clean from Corruption, Collusion and Nepotism (amended by Law No.20/2001). In addition, the Indonesian Government has established the Anti-Corruption Commission through Enactment of Law No.30/2002.

As part of its strong commitments in enhancing cooperation between countries in eradicating corruption, Indonesia will act as host to the second session of the Conference of the States Parties to the United Nations Convention against Corruption which will be held on 28

January to 1 February 2008. Indonesia has actively taken part in a number of meetings in order to seek input which will allow Indonesia to contribute greatly to the CSP-2 UNCAC. Indonesia has taken part in the Expert Group Meeting on Review Implementation of the UNCAC, held in Vancouver 9-11 March 2007, the Global Forum V on Fighting Corruption and Safeguarding Integrity "Fulfilling Our Commitments: Effective Action Against Corruption" held in Johannesburg, 2-5 April 2007, and the Global Financial Crime Meeting in Bangkok, 17 – 20 April 2007.

Indonesia also plans to hold several side events in conjunction with the holding of the CSP2 – UNCAC. Indonesia will be hosting the International Conference on Asset Recovery in September 2007, which will be held back-to-back with the Steering Group of ADB-OECD anti Corruption Meeting for Asia and the Pacific; and also the Second Conference on the International Association of Anti Corruption Authorities (IAACA-2) in 20 - 23 November 2007. Indonesia hopes that through the holding of these events will reaffirm Indonesia's strong commitments towards the eradication of corruption.

At bilateral and regional levels, Indonesia continues the effort to expand cooperation with neighboring countries in combating corruption and in repatriating illegal assets abroad through extradition and mutual legal assistance in criminal matters agreements. Indonesia has signed bilateral agreement with Malaysia, the Philippines, Thailand, Australia, the Republic of Korea, Hong Kong SAR, and with Singapore in May 2007.

Madam President, before I conclude my statements, let me say that the United Nations Convention against Corruption is a remarkable achievement. But let us be clear: it is only a beginning. We must build on the momentum achieved to ensure that all States are willing and able to ratify the Convention at the earliest possible date.

This Convention can make a real difference to the quality of life of millions of people around the world. And by removing one of the biggest obstacles to development, it can

help us achieve the Millennium Development Goals. Be assured that We, Asian-African Countries will do whatever it can to support the efforts to eliminate the scourge of corruption from the face of the earth. Thank you.

**President:** Thailand you have the floor.

**The Delegate of Thailand:** Madam President, on behalf on my delegation, I wish to express our gratitude to the Secretariat of AALCO for their comprehensive study on issues related to the implementation of the UN Convention Against Corruption (UNCAC) which provided us with background information and recent developments conducive to productive deliberations under this Agenda item.

Madam President, the issue of corruption has become increasingly more serious in light of the evolving form and complexity of such crime. Countries are faced with so-called 'policy corruption' and 'borderless corruption'. This has resulted in negative impacts on economic, social, and political sectors of countries around the world. Realizing this fact, the Royal Thai Government has set as a priority in its national agenda to fight against corruption. In this connection, Thailand recently nominated new commissioners to the National Counter Corruption Commission (NCCC) which are comprised of persons with good moral, high integrity and with strong determination to uproot the practice of corruption in Thailand. The NCCC intends to expand its role in preventing and suppressing corruption both in public and private sectors. Its missions are to strengthen the network of cooperation among the public sector, private sector, civil society, mass media, and international organizations as well as to amend laws, rules, and regulations and to develop strategy and monitoring mechanism to accomplish their goals. To date, the NCCC's work has always been in line with the UNCAC, Anti-corruption Action Plan for Asia-Pacific, ADB/OECD Action plan as well as other relevant sub-regional anti-corruption regimes and guidelines. One of its most effective mechanism which deserves mentioning here is the setting up

of an internal inspection/auditor in each unit of government and state agency, thereby successfully overseeing and preventing potential areas of corruption in the government sector on a timely basis.

On the legislative side, several draft law amendments and draft of new legislation have been proposed to incorporate the following:

- a. The definitions and provisions relating to “Foreign Public Official” and “Official of a Public International Organisation”;
- b. The suspension of the statute of limitations where the alleged offender has evaded the administration of justice; and
- c. Asset recovery law.

It is encouraging that lately the Council of Ministers of Thailand has approved the draft amendment of the Thai Penal Code regarding the incorporation of such definitions and provisions and the suspension of the statute of limitations as mentioned above. These amendments will soon be submitted to the Thai National Legislative Assembly for their consideration. Moreover, the new draft Asset Recovery Act and the amendment of the Act on Mutual Assistance in Criminal Matters have already been submitted by the Ministry of Justice of Thailand to the Council of Ministers to facilitate the implementation of Chapter V of the UNCAC.

Madam President, in order to improve the future work of the NCCC to effectively combat corruption in the long-term, Thailand believes it is crucial to promote attitudes and values of honesty as a preventive measure against corruption. As a result, the NCCC's work has to be in coordination with private sector organizations as well as the mass media. The raising of public awareness as well as educating and instilling in our young generation positive values, morals and integrity from an early age on to the working level are key to solving this prevailing problem. Numerous projects and activities such as seminars, anti-corruption handbooks and publicity campaign have

been introduced to enhance public participation and imprint antipathy to corruption.

Madam President, reflecting from the above, Thailand therefore deems it vital to have a close and continuous monitoring mechanism in order to achieve the goal of UNCAC. This can be in the form of status report of state's actions against corruption provided by UNODC in order for states to learn from one another through their experiences in dealing with particular problems. Also the regional seminar should be held regularly in order to disseminate knowledge, lessons learnt and provide input to prevent and suppress corruption. It is also helpful if technical assistance from international agencies is available so as to enable States to undertake domestic legal adjustment in line with international law and good practices. It is therefore imperative that countries not only have more knowledge and skills but must build upon cooperation at all levels to curb this pressing issue.

Madam President, In conclusion, allow me to reaffirm Thailand's commitment to the principles enshrined in the Bangkok Declaration and the recommendations adopted by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, and our firm belief that the accession to and implementation of UNCAC are central to the efforts of the international community to fight corruption. In this regard, Thailand, by making all efforts, will soon ratify the said Convention and will accord high priority in cooperating with other countries in combating corruption as well as promoting a culture of integrity and accountability in both our public and private sectors. Thank you, Madam President.

**President:** May I now call upon Nepal.

**The Delegate of Nepal:** Thank you, Madam President, for giving me the floor to express our views on this very pertinent and crucial issue. I would like to extend my sincere thanks to the Secretariat for the preparation and circulation of the excellent background document in this issue.

Madam President, Corruption has, obviously, emerged as a serious threat to democracy, good governance and rule of law, as well. It is even shaking the foundation of justice. When public authority is abused for personal undue benefits, social stability, social order and rule of law are obviously jeopardized. Equally notable is that corruption also involves transfer of public funds and assets from public to private, from state to individual and sometimes abroad. So corruption has also fatal effects on economic growth of a nation.

Madam President, Given that corruption is a crime, with grave national and international ramifications, and with complex and diverse causes and consequences, it is obvious that national legislation and mechanism alone would not be capable of coping with the crux of this heinous crime. Without collective effect and collaborative mechanism at the sub-regional, regional and global levels, it would, therefore, be quite impossible to root it out completely. In view of this fact, Nepal has always been urging for a comprehensive and multi-disciplinary approach. At this juncture, Nepal believes that the UN Convention against Corruption could serve as an effective instrument for the world community to undergo such approach to curb the fabrics of corruption. Madam President, as a signatory to this UN Convention, Nepal is rigorously working out to establish necessary legal, administrative and institutional frameworks and measures required to effectively implement the Convention at the national level. A High Level Committee formed at the Ministry of Law, Justice and Parliamentary Affairs is working out administrative, legislative and judicial measures required to domesticate the convention. Most importantly, we are drafting protection of witness and whistleblower protection related laws. In view of the firm commitment of the government of Nepal to curb corruption, a comprehensive anti-corruption strategy incorporating preventive, curative and reformative measures are underway. Our efforts are primarily focused on national anti-corruption policies and mechanisms, strengthening judicial integrity and

capacity, promoting integrity in public and private sectors, denying the proceeds of corruption and facilitating the recovery of illicit assets and penalization of crime of corruption.

Madam President, now, Nepal is in the process of exhausting its domestic legal requirements to ratify this Convention. It has already enacted some enabling laws, which include the Prevention of Corruption Act, 2002 and the Commission for the Investigation of Abuse of Authority Act, 1991 with a view to combating corruption more efficiently and effectively.

Madam President, given the complexities of the issues, a developing country like Nepal is obviously completed to face serious financial and human resources constraints. In this regard, a model legislation required to implement the Convention would be helpful. Thus, this Organization should begin to prepare and expedite the process of making such model law. Moreover, it is to note that some provisions of the Convention are somehow ambiguous, which include provisions relating to international cooperation, establishment of supervisory framework and promotion of transparency among private entities. Hence, it is equally important that such model laws intend to elaborate such provisions without running counter to the spirit of the Convention.

In addition, a group of experts could be established to render legal advice and technical assistance to the members facing difficulty while domesticating the Convention. Thank you.

**President:** Pakistan you have the floor.

**The Delegate of Pakistan:** Madam President, First of all I would take this opportunity to congratulate the AALCO Secretariat for preparing the document No.AALCO/46<sup>th</sup> Cape Town Session/2007S.11.

Madam President, Pakistan has been closely following the developments in this area, Pakistan had the privilege to be one of the first signatories of United Nations Convention against Corruption.



Immediately after the signing of the Convention in December 2003 at Merida Mexico in pursuance of the global agenda against the menace of corruption Pakistan hosted an International Conference in Islamabad in April 2004. The Conference was attended by a large number of delegations including heads of Anti-Corruption Agencies and representatives of many international organizations. The Prime Minister of Pakistan inaugurated the Conference while the President of Pakistan General Pervez Musharraf was the Chief Guest at the concluding session. The initiative of the Pakistan Government of convene this international Conference is a convincing demonstration of the national commitment for implementation of the United Nations Convention against Corruption.

The objectives of the Conference were to gather views and experiences of the international community and to develop a national consensus towards ratification of the Convention. There has been no let-up on this initiative in Pakistan. National Accountability Bureau has been put in the lead role to evaluate the provisions of the Convention in consultation with other stakeholders.

Since its inception under the National Accountability Ordinance promulgated in 1999, NAB formulated a comprehensive National Anti-Corruption Strategy (NACS) that is now in its implementation stage through an implementation committee, which has been constituted at a high level. It may be appreciated that National Anti-Corruption Strategy is a radical departure from the traditional enforcement approach. It is a three-pronged approach encompassing awareness, prevention and enforcement. National Anti-Corruption Strategy suggests reforms across all pillars of the national integrity systems. Currently host of reforms are being carried out across all sectors. The Government of Pakistan is actively engaged in taking forward the process of ratification of the Convention.

Madam President, the NAB publishes its report annually. The Bureau has effectively implemented its goals and has been successful with regard to the return of

assets from corrupt elements. Thank you Madam President.

**President:** South Africa you have the floor.

**The Delegate of the Republic of South Africa:** Madam President, Corruption can pose a serious threat to the stability and security of societies, by undermining the institutions and values of democracy, ethical values and justice and by jeopardizing sustainable development and the rule of law. It is therefore imperative that the international community is involved in the fight against corruption.

In Africa this has been done over the past decade, as African leaders have articulated a bold "African Agenda" which rests on five key pillars: development and poverty eradication, peace and security, governance and democratization, accelerated economic growth, and partnerships with the international community. The fight against corruption is a key element of the African initiatives to eradicate poverty and to put African countries on a path of sustainable growth and development. It is part of the continent's efforts to install good political, socio-economic and corporate governance.

South Africa is a party to all the main international and regional treaties against corruption, including the African Union Convention on Preventing and Combating Corruption, the SADC Protocol against Corruption, the OECD Anti-Bribery Convention and the United Nations Convention against Corruption (UNCAC). South Africa has incorporated the specific requirements of these treaties in our domestic law. The South African government has since the advent of democracy painstakingly put in place policies, programmes, laws, partnerships and collaborations at national, regional and international level, directly aimed at combating corruption in our society. However, the multi-sectoral and multi-faceted nature of corruption continues to be a challenge that requires the combined energies of governments and other stakeholders. One of the most important pieces of legislation in the fight against corruption is the Prevention and

Combating of Corrupt Activities Act, 2004. This Act was signed into law on 27 April 2004 to set out additional tools to fight corruption. These include the duty of persons in positions of authority to report corrupt transactions and the establishment of a register of "blacklisting" of businesses that commit corruption, especially in government procurement.

Madam President, Preventative anti-corruption bodies in South Africa include, amongst others, the Public Service Commission, the Public Service Anti-Corruption Unit of the Department of Public Service and Administration, the South African Police Services, the National Prosecuting Authority, the Auditor-General, the Public Protector, Specialized Commercial Crime Courts and the Directorate of Special Operations.

Section 217 (1) of the Constitution of the Republic of South Africa, 1996 mandates that when an organ of State in the national, provincial or local government or an institution contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective. Various legislative initiatives make this possible, primarily through the enactment of the Public Finance Management Act (PFMA) and Municipal Finance Management Act, Treasury Regulations, the Preferential Procurement Policy Framework Act, the Public Audit Act and the Public Protector Act.

Section 32 of the Constitution guarantees the right of access to information and provides that everyone has the right of access to any information held by the State, and any information that is held by another person and that is required for the exercise or protection of any rights.. The Promotion to Access to Information Act, 2000, gives effect to section 32 of the Constitution and in general promotes transparency, accountability and effective governance of all public and private bodies by empowering and educating everyone to understand their rights in terms of the Act, to understand the functions and operation of public bodies and to effectively scrutinise, and participate in, decision-

making by public bodies that affect their rights.

Madam President, South Africa recognises the need for participation of civil society in the fight against corruption. To this end, a tripartite alliance was established in 2001, between the public and private sector and civil society organizations, known as the National Anti-Corruption Forum (NACF). The NACF contributes towards the establishment of a national consensus through the coordination of sectoral strategies against corruption. On a practical level, anti-corruption hotlines have been established in eight national departments and five provinces to make it easy to report corruption. A national anti-corruption hotline (NACH) was also launched on 1 September 2004 with the Public Service Commission assigned the important responsibility of managing it.

One of the most effective tools in the fight against corruption is, however, what has become to be known as whistleblowing. World-wide whistleblowing has become an important and positive tool used in reporting corruption. With the necessary laws in place whistleblowers are increasingly afforded more protection against employers. The positive effect of this is that attitudes against whistleblowers are changing and whistleblowing, at least in the public sector, is becoming generally acceptable practice and an important one in the fight against corruption. South Africa enacted the Protected Disclosures Act, 2000, to make provision for procedures in terms of which employees, in both the private and the public sectors, may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers and to provide for the protection of employees who make disclosures which are protected in terms of the Act from possible occupational detriment.

South Africa's legislative framework also covers international cooperation in respect of mutual legal assistance, extradition, transfer of criminal proceedings, joint investigations through, amongst others, the Extradition Act, the Criminal Procedure Act, the International Co-operation in

Criminal Matters Act and the Prevention of Organized Crime Act.

Furthermore, in relation to the extradition of persons accused of an offence that is covered by UNCAC, South Africa has extradition treaties with other countries. In case where there is no such treaty, the UN Convention may be used as a basis for extradition. Mutual legal assistance is also provided for in the Commonwealth Harare Scheme, in relation to investigations, prosecutions and judicial proceedings. South Africa has also entered into bi-lateral treaties with several countries to provide for mutual legal assistance in criminal matters.

Finally Madam President, the key challenges of implementation that South Africa has identified are asset recovery, capacity building and mutual legal assistance. The cost of implementation of various anti-corruption initiatives has also been an obstacle for us. We sometimes experience difficulties in providing mutual legal assistance and guidelines for grey areas such as extradition are needed. The lack of capacity among members of the judiciary, prosecutors and investigators in anti-corruption matters also pose a challenge. There exists a skills deficit in areas such as asset tracing and recovery. There is a need for the involvement of the private sector in the implementation of our obligations.

When tackling corruption and money laundering, there is a need for the harmonisation of mutual legal assistance legislation in order to enable speedy and effective cross border cooperation. The enhancement of cooperation, special investigative techniques, good channels of communication and information exchange is also required. The importance of personal contact between officials in cooperating countries to create a climate of trust cannot be overemphasized. I thank you.

**President:** the Delegate of Kuwait, you have the floor.

**The Delegate of the State of Kuwait<sup>1</sup>:**

Thank you madam President *In the Name of God, the compassionate, the merciful.*

Combating corruption is a very serious issue and a step in the right path. Corruption has started to spread in the international community in different forms and using different methods. We have to follow a comprehensive method and close international cooperation in order to combat corruption, because corruption is not a local matter, but is a phenomena that influences all communities and economies. Fighting and preventing corruption is the responsibility of all countries. All countries that acceded to international organization had to abide by the convention on combating corruption and convention on transnational crime.

The State of Kuwait, at the national level, we mobilize all our means to fight corruption and to increase transparency, integrity, and passing of laws and acceding to international conventions. It is worth mentioning that the State of Kuwait has ratified the United Nations Convention against Corruption and according to Law 47 in 4 December 2006 and hence we are party of this Convention. Also we have signed the Convention for Combating Transnational Organized Crimes and two Protocols annexed to its and the provisions of such conventions is a law to be enforced in Kuwait. We have the protection of public money and we are fighting corruption indifferent forms and we are criminalizing and we are punishing the perpetrators those who are giving bribery to the civil servants, embezzlement of properties, trafficking in human being and abuse of the jobs, and impeding justice. Also the State of Kuwait has passed a special law for combating money laundering and considers money laundering as a crime and all governmental authorities and financial institutions have the responsibilities to fight such crimes. In addition, confiscating of money resulting from money laundering, the law has criminalized these acts. Also the domestic laws in the State of Kuwait have provision

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<sup>1</sup> Statement made in Arabic. Unofficial translation from the interpreter's version.

relating to the acts of the civil servants in procurements and public money. Also we have established regulatory bodies in order to prevent and combat corruption. Like for instance of accountability of the Central Bank, the customs, the Police, the interior Ministry can combat corruption. Also the cabinet has passed its Decree 942 that included an agreement to establish projects concerning these authorities, that the civil servant, according to Article 26 is to abide by the laws and that they cannot have a public job and indulge in commercial activities either in his name or proxy, is prohibited and this includes all those are in high posts in the country. There is a notification that they should not combine two jobs and would not take any other commercial job while he is a civil servant. The Ministries will provide the Ministry of Industry and Ministry of Justice the names of all officials who are working in leadership posts each year and the Minister would notify if any person is practicing any commercial job in addition to his government position. There is a budget to coordinate with the technical bureau of the Ministry of Justice in order to put statements to be signed. All civil servants, according to article 25 para 3 of the Labour Law that prohibits civil servants to work except with the permission by the Ministry or this would be a violation for which the civil servant would be punished for. There are certain restrictions that the civil servants should abide to. And in order to encourage reporting against any corruption, we have Ministry of Interior which compiles the crimes of corruption, bribery etc., in order to be able to receive whatever reports pertaining to these crimes and to investigation and make sure of the information it receives in order to refer it to the judicial authority. All government agencies should cooperate with the bureau to serve the citizens and follow-up in whatever practices are taken and procedures concerning information it receives pertaining to corruption. What are the actions taken against such reports for those to be discovered to commit corruption. Where no violation, protect the innocent civil servant.

The Ministry of Information should cooperate with other authorities in order to

have a major campaign in order to disseminate information about the menace and threats of corruption and all the citizens should know the way to identify and report any crime of corruption. The Ministry of Finance is providing financial means for this purpose. The State of Kuwait is also actively involved with the civil society to combat corruption. The State of Kuwait will look forward to have real cooperation between different countries of the world, particularly those who are parties to the UN Convention against Corruption to enforce and realize its objectives in order to ensure the safety and prosperity of our countries. Thank you Madam President.

**President:** Republic of Kenya, you have the floor.

**The Delegate of the Republic of Kenya:** Madam President, the biggest obstacle to economic and social development in the developing States has been the massive looting of our public resources through corruption.

It is for this reason that the Government of Kenya has placed a very high premium on the fight against corruption. It is at the very top of our priorities since we have a vision of eradicating poverty and creating a democratic, prosperous and corruption-free Kenya.

Madam President, Kenya demonstrated the will to fight corruption by being the first country to sign and ratify the UN Convention Against Corruption during the High-level Political Conference held in Merida, Mexico on 9th to 11th December 2003. Kenya has acceded to the United Nations Transnational Organized Crime Convention and is also a State party to the African Convention on Preventing and Combating Corruption which it ratified in February this year.

Madam President, the approach of the Government of Kenya in the fight against corruption is based on five main fronts:

1. The enactment of the necessary legislation to establish a legislative framework on which to anchor the

war on corruption. This has led to the enactment of the Public Officers Ethics Act, Economic Crimes Act to supplement the other penal legislations.

2. Enforcement of anti-corruption laws through investigation of offences of corruption and economic crimes as well as asset tracing and recovery exercise on all corruptly acquired assets.
3. Identification and sealing of corruption avenues by way of establishing effective public sector management controls.
4. Nationwide Public education aimed at stigmatizing corruption and inducting behavioural change.
5. Implementing macroeconomics and structural reforms to reduce the prevalence of corruption by scaling down the role of the public sector.

The Government's core strategy for fighting corruption has concentrated on creating effective institutions for investigation, prosecution and the punishing of corruption, as well as institutions for prevention and public education. As part of the approach, the Government is continuously reviewing existing provisions governing the conduct of public servants to ensure that they support the effective implementation of the Action Plan. The review addresses issues such as conflict of interest, adherence to relevant codes of Ethics as well as the question of accountability and transparency in the conduct of public affairs.

The Government is also engaged in regular dialogue with Parliament, the private sector, the civil society and the International Community with regard to anti corruption campaigns.

Madam President, The biggest challenge to developing countries such as Kenya is tracing and recovery of the proceeds of crime. Asset tracing and recovery efforts are impossible without international collaboration.

Kenya also recognizes the sophistication and cross-border dimension of corruption,

hence understands that the municipal legislative and administrative measures may not be adequate in so far as eradicating corruption is concerned. It is for this reason that we laud the measures taken to enhance international cooperation.

Madam President, Corruption networks permeate all aspects of our social, economic and political processes. It is one of the greatest development challenges facing our States today. Corruption, thus is not merely a matter of law, crime and punishment but a complex social, political, economic, moral and cultural problem which require fundamental change in attitudes and behaviour. There ought to be a social transformation to create a new culture of integrity and rejection of corruption.

Madam President, AALCO's international expertise and technical assistance can help in the area of anti-corruption transitional justice. The magnitude, complexity and pervasiveness of corruption in can overwhelm, and is likely to stretch the resources of anti corruption commissions to the limits.

The continuing contradiction in transition anti-corruption strategies is whether the scarce resources should be invested in creating a better future or expended in digging up the rotten past. I Thank You.

**President:** May I call upon the delegate of China.

**The Delegate of the People's Republic of China:** Madam President, the Chinese delegation wishes to take this opportunity to exchange views with Asian-African countries, on international cooperation against corruption, especially on how to effectively implement the United Nations Convention Against Corruption.

Madam President, we are delighted to see that, in no more than 3 years since the Convention entered into force on December 14 2005, the contracting parties have increased to 93 states, and the First Conference of States Parties of the Convention was successfully convened in Jordan last December. The Chinese

delegation holds that one of the important missions in international anti-corruption cooperation at the current stage is to make full use of the international cooperation mechanism prescribed in the Convention, such as legal assistance, extradition, law-enforcing cooperation and asset recovery, to enhance cooperation among member states in punishing corruption criminals and recovering assets related to corruption.

Madam President, both legal assistance and extradition are important tools to combat cross-border corruption crimes. The Chinese government has worked to conclude treaties on mutual legal assistance and extradition with other countries. Up to now, China has concluded treaties on mutual legal assistance with more than 40 countries and on extradition with 30 countries. We hope to strengthen the cooperation with Asian-African countries in the field of mutual legal assistance and extradition.

Madam President, asset recovery is an important content of international anti-corruption cooperation, it is also a unique legal framework set by the United Nations Convention against Corruption. It is our view that, given the complex legal procedures on asset recovery stipulated in the Convention, and the fact that judicial practice in asset recovery under the Convention is insufficient because of the short period of time since the Convention entered into force, the specific implementation of the legal framework on asset recovery depends, to a large extent, on how compatible relevant domestic laws are with the provisions of the Convention. We call on all States Parties to strengthen political will on cooperation, overcome the legal obstacles between the requesting states and the requested states, and take measure to prevent the criminals from abusing the judicial procedures of the State they hide in to evade extradition and shelter illegal asset.

Madam President, the United Nations Convention against Corruption establishes the principles to guide countries in their joint fight against corruption. With the entry into force of the Convention and the successful convening of the First

Conference of States Parties of the United Nations Convention against Corruption, effective implementation of the Convention has become the focus of the attention of States Parties and the international community. We hold that at the current stage, the most important work is to increase technical assistance to developing states, enhance communication and cooperation among States Parties, and to gradually establish implementation mechanism which best fit the UNCAC, based on the experiences gained in the process of the implementation.

Madam President, the Chinese delegation takes this opportunity to reiterate that the Chinese government is resolute in combating corruption, and its position on strengthening international anti-corruption cooperation is clear-cut. We will work with the international community, do our part for the effective implementation of the Convention, and work to foster a healthy legal environment for the economic and social development of China and the world at large. Thank you, Madame President.

**President:** Sudan has the floor.

**The Delegate of Sudan<sup>2</sup>:** Thank you Madam President. In the Name of God, the compassionate, the merciful. In the first place we fully believe that corruption is the greatest disease among the communities, which impede the process of development and services and impedes the development of any State. It has adverse impact on the interests of the citizens as the money within is used in extending services to the citizens to establish infrastructure and to combat poverty go to the pockets of some people, whether they be government officials or individuals or enterprises, local or international. Besides that this money which they get through corruption are easy money which can be obtained easily, are being used in funding the acts of terrorism and drugs, smuggling, trafficking women and children and all other forms of crimes.

Secondly, definition of corruption in one work is not an easy matter, because all acts

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<sup>2</sup> Statement made in Arabic. Unofficial translation from the interpreter's version

of corruption is multifaceted and is developing every time and is different from one place to another. Excreting efforts in finding a uniform and comprehensive definition of corruption would be a difficult proposition. That is why we should set aside the matter of definition of corruption and our law should criminalize crimes which represent corruption such as misuse and abuse of public money, embezzlement, abuse of office, bribery forging, and not granting immunities to the government employees, which is the most serious forms of corruption. This corruption is not only practiced in the mechanism of the States but also spreads to the private sector as well.

The Sudanese law since 1995 has enshrined many provisions to combat corruption which I had been mentioning, including punishment. In addition the constitution of Sudan commits all the constitutionally responsible officials to present adequate report of the money they get before entering into public service. It is imperative that every State should shoulder its responsibility in combating corruption through legislations and reviewing of administrative matters of the State and encourage rule of law in police, ministers and courts and increase their capabilities and training and should including subject of combating corruption in all curriculums.

But efforts to combating corruption should not be confined to individualistic efforts of the countries but there should be cooperation among all the countries though the exchange of data, knowledge and expertise and should conclude bilateral agreement in order to extradite convicts and mutual legal cooperation in criminal matters in order to combat this phenomena. Asset recovery for the countries and third world countries in particular, so many enterprises in Europe and America through contract, should be given much attention by us. There is a need to accept the sentences on asset recovery passed by courts of third world countries and implement these judgments. So it is imperative that this Organization should request the countries in western Europe and America to provide us with the names of firms and institutions and individuals which have been

condemned in these courts for practicing corruption and provide us the sentences passed by the courts against this firms and share other knowledge and information in order to help us deal with these practice and protect public money and protect the rights of our people and country. Thank you Madam President.

**President:** Saudi Arabia, you have the floor.

**The Delegate of the Kingdom of Saudi Arabia<sup>3</sup>:** Thank you Madam President. In the Name of God, the compassionate, the merciful.

The delegation of the Kingdom confirms that corruption is one of the multinational crimes which cannot be combated in the local or international level alone. If corruption take place it would be terrible. Hence, in the kingdom, we are following our Constitution based on the Holy Quran, the *Sunnah* of the Holy Prophet, to combat corruption according to Shariah that has been adopted more than 1400 years ago, according to the will of the Almighty who stood against corruption and said "Do not corrupt in the world" and the Prophet has condemned corruption and prohibited taking and giving bribe. The Kingdom has adopted laws to combat corruption more than fifty years ago. For example, the law for combating bribery, forgery, embezzlement and one of the most modern law was the Money Laundering Law 2003 and the National Strategy for protecting Integrity and Combating Corruption 2007.

Madam President, Islam condemns corruption in all its forms and the courts are implementing it in Shariah and it concerns. The Kingdom of Saudi Arabia believes that the Member States of AALCO needs urgently to strengthen awareness among them and this would take place only after confirming that there are Penal Code at all levels against corruption to be included in the laws of their countries that would lead to decisive measures in combating corruption.

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<sup>3</sup> Statement made in Arabic. Unofficial translation from the interpreter's version

Madam President, the Kingdom is one of the first countries to ratify the United Nations Convention against corruption. Thank you Madam.

**The Delegation of the Arab Republic of Egypt**, due to the paucity of time at the Session, statement in Arabic was handed over to the Secretariat and deemed to be read.

**President:** I now call on the Secretary-General to make some announcements.

**Secretary-General:** Thank you Madam President. The host Government has informed me that all the buses would be ready outside the centre to take all the delegates who want to join the excursion. And they will bring them back here after having lunch in the Parliament. So all those who want to join the excursion, please rush as we will move from here by maximum 11.30 AM. After the excursion we shall resume from where we have stopped now and consider Expressions of Folklore and the rest of the programme. Thank you very much and have a very nice excursion and lunch and meet again after that.

**The Meeting was adjourned to be resumed at 4.30 PM**

**Secretary-general:** I believe you had a very nice tour and lunch in the Parliament. To come back to what I said in the beginning when I presented the Budget 2008 I told that due to lack of consensus regarding the increase in the budget I had dropped the idea of discussing it while we discuss the 2008 Budget. And I had told my colleagues in the Liaison Officers meeting that I would prepare a study which will be distributed to the Member States to give them much more time to study it deeply and then think about it and then come back to the secretariat whether positively or negatively. So before we leave now I will distribute what are my proposals and why made them. Of course the Member states would have lack of time to think about it now and can come back to the secretariat at a later stage. We are still waiting for the documents now.

**C. Message of Thanks to His Excellency Mr. Thabo Mbeki, The President of the Republic of South Africa**

**Secretary-General:** It is customary at the end of the Session to send the message of thanks to the President of the host country. Therefore, the Secretariat has prepared a message, which I read it to the delegates of the Member States and if all are agree to it, I would formally sign it and send it on behalf of the delegates of the Member States to His Excellency the President of the Republic of South Africa.

“Excellency,  
On behalf of all the Delegations from the Member States of Asian-African Legal Consultative Organization (AALCO) and Observers who participated in the Forty-Sixth Session of the AALCO, I would like to extend sincere gratitude through this message to His Excellency Mr. Thabo Mbeki, the President of the Republic of South Africa. The following message may please be considered as a token of our heartfelt gratitude and respects.

We, the participants of the Forty-Sixth Session of Asian-African Legal Consultative Organization (AALCO), would like to take this opportunity to profoundly thank with gratitude and appreciation, Your Excellency and through you to your esteemed Government and the people of Republic of South Africa for magnanimously hosting the Forty-Sixth Session of AALCO in this beautiful city of Cape Town known also as the ‘legislative capital’ of South Africa and making this event a very successful one.

Your Excellency, I take this opportunity to thank your officials for the support extended in providing wonderful administrative arrangements in an organized and systematic manner depicting true professionalism in their endeavour to hold the Session in the best possible manners in spite of having a very short period for the preparations. Moreover, despite very short notice, your Government agreed to host this Session. Indeed, this Session can be earmarked as an outstanding one because of the ready acceptance of



Your Excellency and your Government to prepone the proposal to hold the Forty-Seventh Session in this beautiful and economically fast-moving country.

Your Excellency, the beauty and serenity of this city coupled with the strenuous efforts of your committed officials and grandeur hospitality of your people has helped each one of us present here, especially the officials of AALCO Secretariat in mitigating the week-long Session in a remarkable way. Your Excellency would be pleased to know that this Session was marked by a spirit of constructive dialogue and cooperation among the attending delegations, enabling them to arrive at crucial decisions at substantive and organizational matters of AALCO. While recalling all the factors contributing to the success of the conference, it is significant to profoundly appreciate the exceptional cooperation of the Government of the Republic of South Africa in the outstanding achievements of our deliberations.

Please accept Your Excellency, the assurances of our highest consideration and may the Almighty bless you, the Government and the people of South Africa”.

**Secretary-General:** On behalf of all the Member States, I am signing and sending it to his Excellency Mr. Mbeki.

#### **D. Expressions of Folklore and its International Protection**

**President:** Good Afternoon. We now resume with our work and we will be dealing with the subject “Expressions of Folklore and its International Protection”. This is the last item on the agenda and I call on the Secretary-General to introduce the matter.

**Secretary-General:** Thank you Madam President, Hon’ble Ministers, Vice Ministers, Excellencies, Ladies and Gentlemen,

I am greatly honoured to introduce the agenda item “Expressions of Folklore and its International Protection”, contained in

Secretariat Document AALCO/46<sup>th</sup>/CAPE TOWN SESSION/2007/S 14. It may be recalled that it has been on the agenda of the Organization since the Forty-Third Session held in Bali in 2004. The report provides an overview of the work of the World Intellectual Property Organization (WIPO) and its Intergovernmental Committee (IGC) since its inception in 2001, focusing its attention on the recently concluded Ninth and Tenth Sessions of the IG Committee and the documents circulated at the Sessions for the consideration of the Member States. The report of the AALCO Secretariat provides a brief overview of the draft policy objectives and core principles for the protection of traditional cultural expressions/folklore and has been annexed to this Report.

Excellencies, The W.I.P.O.’s IGC, which had so far convened ten sessions, made considerable progress in formulating flexible policy objectives and core principles for the protection of traditional cultural expressions/folklore. At these sessions, in which I have actively participated on behalf of the Member states, the discussions focused on different options available for States to effectively protect folklore and prevent its misuse. However, there are many outstanding issues on which the Committee is yet to evolve a consensus, which would be considered at the Eleventh Session of IGC to be held from 3-12 July 2007, which is now held in Geneva.

During the Ninth Session of the Committee the delegates urged the Member States to focus and accelerate discussions with a view to adopting a legally binding instrument. But, in the Tenth Session, the delegates expressed their concerns on the issue of misappropriation of expressions of folklore. Although there was a lack of consensus on the objective of the Committee, namely the adoption of a legally binding instrument, there appeared to be a growing support in this direction. This Session also urged and agreed upon a new approach which adopted a separate set of issues on Traditional Cultural Expressions (TCEs), and certainly it would represent a way forward to Member States

for further discussion, as it provides a systematic approach to the fundamental policy choices to develop or enhance the protection of expressions of folklore.

Madam President, In spite of many differences, both developed and developing countries agreed to move forward on general guidelines and statements of principles for the protection of folklore, as some developed countries (the US and Canada) were unwilling to continue work on drafting substantive provisions for a possible international treaty.

Despite the fact that it would be extremely unrealistic to expect countries to agree on the substance of the international protection on this issue immediately, it is nevertheless crucial for at least the developing countries, which are the owners of the resources, to be able to agree among themselves on the best possible protection model.

Madam President, during my recent visit to the Sultanate of Oman, I made a proposal of organizing a Expert Group Meeting/seminar on Expressions of Folklore and its International Protection jointly organized by the AALCO and the Sultanate of Oman with the cooperation of the UN specialized agencies. His Highness Sayyid Haitham bin Tariq al Said, Minister of Heritage and Culture readily welcomed the proposal in principle. The details of the Meeting/Seminar will be worked out soon after the Forty-Sixth Session.

Many topics could be deliberated on this regard and in this context, we believe that AALCO could be a suitable forum for further discussion on the protection of folklore. *The deliberations at the present Session could focus on; (i) Prevention of the misuse, misappropriation and protection of expressions of folklore, (ii) Establishing an international binding legal instrument to safeguard the rights of expressions of folklore, and (iii) Creating awareness amongst the Member States to utilize the voluntary fund set up by the WIPO for the indigenous communities and other international Organizations to participate in the IGC meeting in the WIPO.* This would help in consolidating the position of Asian-African countries on

the substantive aspects of the future international instrument for the protection of folklore. I am sure that the joint Expert Meeting might be held with the cooperation of Sultanate of Oman and could also discuss a draft of an International or Regional Legal Instrument to Protect Expressions of Folklore. Thank you Madam President.

**President:** Now the floor is open. I see Iran and Oman, Iran you have the floor now.

**The Delegate of the Islamic Republic of Iran:** Thank you Madam President, In the name of God, the Merciful, the Compassionate

As you are fully aware, the majority of the AALCO Member States have a rich and remarkable cultural heritage and invaluable genetic resources which they wish to protect, while there is not an effective and strong legal mechanism for the protection of folklore, traditional knowledge and genetic resources for preventing and suppressing misappropriations and misuses of them. Although the developments of legal framework for the protection of folklore has been a subject of discussion in some international bodies such as WIPO and UNESCO, these efforts have not culminated in a legally binding instrument for the protection of folklore.

Madam President, My delegation believes that the existing IPR regime for the protection of folklore is insufficient for protecting against abuses and misappropriations of expressions of folklore and traditional knowledge and fight against bio-piracy. So it is necessary to find and resolve proper means to face illicit and unfair exploitation of folklore and traditional knowledge.

The subject of protection of Genetic Resources, Traditional Knowledge and Folklore (GRTKF) has been one of the main concerns of developing countries during the last ten years, with the establishment of the 'WIPO Intergovernmental Committee on Intellectual Property, Genetic Resources,

Traditional Knowledge and Folklore' (WIPO IGC) in 2000. The Islamic Republic of Iran closely observed and actively participated in the WIPO IGC activities. However, WIPO IGC still needs more attention to reach to an acceptable result.

Madam President, Asian and African countries are rich in Genetic Resources, Traditional Knowledge and Folklore. They share a common concern over the increasing misuse and misappropriation of GRTKF. Consequently, the international dimension of the protection of GRTKF has become a major concern for all these countries. So, their international cooperation is important for leading the WIPO IGC activities to come up with a tangible result and establishment of an internationally binding instrument/s. Their international collaborations are also crucial for tackling the misappropriation of GRTKF and preventing the granting of IPRs without the authorization of GRTKF holders.

AALCO with representation from a large number of nations of Asian and Africa and being an intergovernmental legal body, could be an appropriate forum for discussion and deliberation on the protection of GRTKF. It would be of help in consolidating and harmonizing of the Asian-African country positions on the substantive aspects of the discussion in the UNESCO, UNEP, WHO, WTO and, in particular, WIPO. In this regard, the principle of Prior Informed Consent and benefit sharing should be recognized and applied while considering of negotiating the relevant international instruments. Thank you Madam President.

**President:** Thank you. Oman you have the floor now.

**The Delegate of the Sultanate of Oman:** Thank you Madam President. Madam President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, First, of all, I would like to thank the Secretariat for the comprehensive document.

Madam President, "Folklore" has been defined as "the body of expressive culture,

including tales, music dance, legends, oral history, proverbs, jokes, popular beliefs, customs and so forth within a particular population comprising the traditions (including oral traditions) of that culture, sub culture or group. It is also the set of practices through which those expressive genres are shared". Expressions of folklore cover many forms of folkloric expression: Folk songs, stories, dances and art for example. Developing countries have traditionally given more importance to these expressions of folklore as they form an integral part of their cultural identity.

Oman is one such country that places much importance on expressions of folklore and actively encourages its preservation as part of its culture and heritage. Early on, with the dawn of the Renaissance, Oman was at the forefront of Arab countries that established a specialized ministry concerned with matters of culture and heritage, the Ministry of Culture and Heritage. Royal Decree 6/80 issued a law on Protecting National Heritage. On an international level, Oman most recently joined the Convention on the Protection and Promotion of the Diversity of Cultural Expressions only earlier this year. It had also joined a number of international legal instruments concerned with the protection of culture and heritage including the Convention for the Safeguarding of the Intangible Cultural Heritage in 2005, the Convention concerning the Protection of the World Cultural and Natural Heritage in 1981 and the Convention on the Means of Prohibiting and Preventing the illicit Import, Export and Transfer of Ownership of Cultural Property in 1977.

Madam President, On the national front, Oman has actively encouraged preserving expressions of folklore. In 1984, the Ministry of Information established the Oman Centre for Traditional Music to preserve its traditional music. The Centre took on the role of promoting and publicizing Oman's musical tradition regionally and internationally. It also primarily documents Oman's musical traditions, including photographs, audiovisual media and sound recordings and provides their use for research. Recordings are even used to teach music in

schools in an effort to introduce schoolchildren to a part of their culture from a young age.

Another entity, the Public Authority for Craft Industries, is concerned with protecting Oman's traditional crafts and reviving its industry. It provides training to craftsmen in the different regions of the country as well as offering them technical support.

Madam President, with the advent of technological advances, however, serious concerns for the misuse of expressions of folklore were raised, and in an effort to prevent the distortion of these folkloric expressions and their possible eventual loss, efforts were made to provide adequate protection to expressions of folklore using legal instruments already in place. Protection by copyright was an obvious, initial solution as some expressions of folklore can be categorized as literary and artistic works and would therefore attract protection under various provisions, for example Article 15(4) of the Berne Convention for the Protection of Literary and Artistic Works. There were clear inadequacies with that, however, as firstly, in order for a work to attract copy right protection, its author must be known. In the case of many expressions of folklore is not the case as their authors are anonymous and these expressions are passed down from generation to generation. Secondly, copy right gives its author the exclusive right to exploit the work before it is available in the public domain, whereas expressions of folklore are already in the public domain. Different intellectual property rights such as trademarks, industrial designs and geographical indications also provided some level of protection but were felt to be generally lacking.

The numerous difficulties with current legal instruments providing adequate protection to expressions of folklore stresses the need for a *sui generis* right on this matter. A first attempt at this was in the form of the WIPO/UNESCO Model Provisions for National Laws on *sui generis* Protection of Expressions of

Folklore which was intended to be incorporated into national legislation.

Madam President, Efforts are still being made to found an instrument devoted to the protection of expressions of folklore. It is important however to allow room for different countries to take into consideration their own culture and other issues important to them when affording this protection, perhaps by laying down guidelines and model provisions rather than strict rules. Thanks for your kind attention.

**President:** Thank you. Now the floor is open to Indonesia.

**The Delegate of the Republic of Indonesia:** Thank you Madam President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, First of all, our delegation would like to congratulate the Secretary General of AALCO for including the "Expressions of Folklore and its International Protection" in the agenda of its 46<sup>th</sup> Session. This forum would be benefited from such exercise in further discussing issues related to the possible international protection of folklore.

Madam President, WIPO and UNESCO have been active in the field of folklore over the past three decades, including the launching of a joint Model Provisions that provide "sui generic" model for intellectual property-type protection of traditional knowledge-related subject matter. In this light, we closely observe the work conducted by the intergovernmental committee under the aegis of WIPO to explore the proper mechanisms for the protection of genetic resources, traditional knowledge, and expression of folklore.

In this vein, we would like to share our experiences in this field. As an archipelagic country composed of more than 17,504 islands, Indonesia is endowed with vast natural resources and cultural heritage. It has more than two hundred and twenty million people comprising of ethnic and sub ethnic groups that speak about approximately 731 dialects. Such diversity coupled with a long cultural history is

certainly a great and valuable asset for Indonesia that needs to be protected.

For that reason, Indonesia noted with great apprehension over the years the emergence of various types of exploitation of expressions of folklore or "traditional cultural expressions – TCE" as referred by WIPO IGC. This type of exploitation has been crafted in such a way that give precedence to development of technology and expansion of business interests over respect to fundamental cultural and economic interests of the concerned community. It is a distressing development that needs our outmost attention and immediate actions.

Madam President, Excellencies, Distinguished Delegates, Ladies and Gentlemen, Given this fact, Indonesia exerts continuous efforts to promote protection of TCE, including the inclusion of adequate provisions in the national copy right law. Indonesia also established a National Working Group on the Empowerment of Genetic Resources, Traditional Knowledge and Folklore with the aim to study and prepare a national system for the protection of genetic resources, traditional knowledge and folklore. We need to further strengthen our capacity and institution by designing and implementing various effective measures.

In line with the commitment, Indonesia recently hosted "the Asian African Forum on the Protection of Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources" in Bandung on 18-20 June 2007. The important forum had passed "Bandung Declaration" that reaffirmed the need of national, regional and international the efforts to preserve, protect and promote the Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources. In this regard, we encourage the member countries of AALCO to make bilateral and multilateral agreements in the protection of genetic resources, traditional knowledge and folklore.

The message also emphasizes on the importance of the Asian African countries to work closely with relevant organization

regional and international organisation, such as the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore-WIPO for the establishment of an international legally binding instrument on the protection of Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources and take into account the requirements of the disclosure of origin.

Madam President, Furthermore, my delegation hopes that AALCO forum recommends a depth-study on the exploitation of intangible expression of folklore. This study is expected to give recommendation on the measures can be taken by members of AALCO in providing effective legal protections for the intangible expression of folklore.

Finally, it is recommended that the member countries of AALCO exchange information and make consultation in regard with the development of IPR's protection system of expression of folklore, genetic resources and traditional knowledge. Thank you.

**The Delegation of the Arab Republic of Egypt** due to the paucity of time at the Session, statement in Arabic was handed over to the Secretariat and deemed to be read.

**The Meeting was thereafter adjourned**