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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

CHALLENGES IN COMBATING CORRUPTION: THE ROLE OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

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(Deliberated)

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I. Introduction

A. Background

1. The agenda item "An Effective International Legal Instrument Against Corruption" was introduced into the agenda of the Asian-African Legal Consultative Organization [AALCO] by the then Secretary-General of AALCO at its Forty-First Session held at Abuja, Nigeria in 2002. This introduction had coincided with the efforts of the United Nations General Assembly (UNGA) to adopt an international convention on corruption. In its Resolution 55/61 adopted in 2001, the General Assembly established an Ad Hoc Committee for the Negotiation of a Convention against Corruption. That resolution also outlined a preparatory process designed to ensure the widest possible involvement of Governments through intergovernmental bodies. It is important to note that the Ad Hoc Committee was an open-ended body and was consistently attended by a very high number of delegations from different countries.

2. It was at this stage that AALCO had joined itself with the workings of the Ad Hoc Committee with the aim of influencing the negotiation process by giving the common concerns of the Asian-African States to it. AALCO's concerns were well in tune with the reality that corruption, though found in all countries, big and small, rich and poor, is a massive problem in developing societies. The Ad Hoc Committee held seven Sessions to successfully complete the negotiations and the United Nations Convention against Corruption [UNCAC or the Convention, hereinafter] was adopted through consensus by the General Assembly in October 2003.

3. The UNCAC, which came into force in 2005 and has got 167 State Parties[1] to it, is a powerful weapon in the armoury of the international community in its fight against corruption. The AALCO, convinced as it is, that corruption is no longer a local matter but a trans-national phenomenon that affects all societies and economies, and that a comprehensive and multi-disciplinary approach is required to prevent and combat corruption effectively, has been regularly deliberating on various aspects of the UNCAC during its Annual Sessions, with the objective of promoting the domestic implementation aspects of the UNCAC in its Member States. It has also been very vocal in promoting the cause of the UNCAC by adopting resolutions at its Annual Sessions encouraging its Member States to ratify the Convention. In pursuance of its work on corruption, AALCO has also produced two Special Studies on the subject. They are: *Combating Corruption: A Legal Analysis (2005);* and *The Rights and Obligations under the United Nations Convention against Corruption (2006).*

[1] See Annex I for the list of AALCO Member States which have ratified/acceded to the Convention

4. Be that as it may, it needs to be mentioned here that the UNCAC contains a mechanism for implementation, in the form of a Conference of the State Parties (CoSP) with a Secretariat that is 'charged to assist it in the performance of its functions'. The First Session of the CoSP to the UN Convention against Corruption was held from December 11 to 14, 2006 at Amman, Jordan and the Second Session of the CoSP to the UNCAC was held in Nusa Dua, Bali, Indonesia, from 28 January to 1 February 2008. The Third Session of the CoSP to the UNCAC took place at Doha from 9 to 13 November 2009, with the specific agenda of creating a mechanism to review the implementation of the UN Convention against Corruption.

5. The issue of corruption was not discussed as a deliberated item at the 51st Annual Session of AALCO held at Abuja, Nigeria from 18 - 22 June 2012. However, various member states reaffirmed their commitment to the battle against corruption during this session by reiterating the principles of and need for cooperation, particularly with regard to the return of assets and outlining some of the efforts taken by them to involve civil society and non-governmental bodies in combating corruption.

6. Hence this year the agenda item on corruption remains a deliberated one, and the report of this year focuses on a number of meetings in the context of UNCAC that have taken place in 2012. These include, *firstly*, the Third Session of the Implementation Review Group of the United Nations Convention against Corruption, held in Vienna from 18 to 22 June 2012, which was focused on addressing the status and implementation issues facing the UN Convention against Corruption among the various State Parties. *Secondly*, the Sixth Intersessional Meeting of the Open-ended Intergovernmental Working Group on Asset Recovery (Vienna, 30-31 August 2012) which focused on the mechanisms for recovery of property through international cooperation in confiscation and International cooperation for purposes of confiscation. *Thirdly*, the First Session of the Open-ended Intergovernmental Expert Meeting on International Cooperation (Vienna, 22-23 October 2012), which focused on Extradition and Mutual Legal Assistance.

II. Third Session of the Implementation Review Group of the United Nations Convention Against Corruption, held in Vienna from 18 to 22 June 2012

A. Background of the Implementation Review Group of the UNCAC

7. In its resolutions 1/1, 2/1 and 3/1, the Conference of the States Parties to the United Nations Convention against Corruption recalled article 63 of the Convention, in particular paragraph 7, according to which the Conference would establish, if it deemed it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

8. The duly formed Implementation Review Group is an open-ended intergovernmental group of States parties that operates under the authority of and reports to the Conference. The functions of the Implementation Review Group are to oversee the review process and identify challenges and good practices and to consider technical assistance requirements in order to ensure effective implementation of the Convention.

9. In its resolution 4/1, entitled "Mechanism for the Review of Implementation of the United Nations Convention against Corruption", the Conference endorsed the guidelines for governmental experts and the secretariat in the conduct of country reviews and the blueprint for country review reports as finalized by the Group at its first session.

10. In the same resolution, the Conference recalled its decision, contained in its resolution 3/1, by which the Group was charged with following up and continuing the work undertaken previously by the Open-ended Intergovernmental Working Group on Technical Assistance, taking into account the fact that, pursuant to paragraph 11 of the terms of reference, one of the goals of the Mechanism is to help States Parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance.

11. In its resolution 3/4, entitled "Technical assistance to implement the United Nations Convention against Corruption", the Conference took note of the recommendations of the Open-ended Intergovernmental Working Group on Technical Assistance contained in the report of the Secretariat on the work of that Working Group (CAC/COSP/2009/8).

B. Highlights of the Session

i. Drawing of Lots

12. Pursuant to paragraphs 14 and 19 of the terms of reference of the Review Mechanism, lots were to be drawn to determine which States Parties would participate in the reviews. In its resolution 4/1, the Conference endorsed the practice followed by the Group for the drawing of lots.

13. At its first session, the Group drew lots for States Parties to be reviewed in the first cycle. In accordance with the organization of work, lots could be redrawn towards the end of the session in order to allow States under review sufficient time for consultations on whether they would like a draw to be repeated. Three States parties informed the Group that they wished to defer.

14. To comply with the requirement that by the end of a given cycle all State Parties must have performed a minimum of one and a maximum of three reviews, it was recommended to not consider States that had already performed multiple reviews.

15. However, as there were only two years left in the current review cycle, States that did not perform a review during the current year would necessarily have to do so in the fourth year. States that were under review in the fourth year and that had never performed a review would therefore not have the possibility of declining to serve as reviewers in accordance with paragraph 20 of the terms of reference.

16. The difficulty was compounded by the fact that those States that had become parties to the Convention after the launch of the Review Mechanism would be reviewed in the fifth and last year of the cycle. Experience had shown that States gained valuable insight and experience in the review process when they served as reviewers before being reviewed, a point that was even more relevant for new parties. Furthermore, the Group of Asian States had seen a large increase in States Parties since the first drawing of lots, particularly among small island States. Those small States could find it difficult to both undergo their own reviews and be a reviewing State party.

17. The Group agreed to initiate the drawing of lots for the States under review in the third year with only States that had never performed a review. When the States that had never performed a review was exhausted, then States that had performed one review would be included in the drawing of lots.

18. Several State Parties that were either under review in the third year or already selected to perform a review in the third year declined to serve in a second review. Some States Parties that were selected to be reviewed or to perform a second review agreed to serve in two country reviews.

ii. Discussions Pertaining to Implementation and the Review Mechanism

19. In the discussion, speakers reported on their national anti-corruption efforts, including new legislation on access to information, money-laundering and lobbying, as well as institutional reform, inter-agency cooperation and cooperation with the private sector. Speakers also referred to the recent Group of Twenty declaration in this regard, to the Open Government Partnership initiative and regional and multilateral initiatives.

20. Several States reported on measures taken in implementing the chapters on prevention and asset and emphasized the importance of preparing themselves for the second cycle well in advance, including through the Open-ended Intergovernmental Working Groups on the Prevention of Corruption and on Asset Recovery.

21. The Review Mechanism was referred to as a powerful instrument to generate dialogue and cooperation. Preparing the responses to the self-assessment checklist was regarded as a good opportunity for inter-agency cooperation. Multi-stakeholder approaches, in particular on the involvement of civil society and the private sector in the country reviews, trilateral meetings and other informal consultations at the margins of sessions of the Group and other meetings were also mentioned as good practices.

22. Many country reviews were not concluded within the indicative timelines contained in the guidelines for governmental experts and the secretariat in the conduct of country reviews and some delegations advocated taking a more realistic approach to timelines, considering the complexity of the two chapters under review; translation requirements and capacity issues. Others called upon countries to comply with their obligation to designate focal points and governmental experts and follow the process of the country reviews within the established timelines. The delays in the reviews were reported to cause problems with regard to the continuity of the review process and of the responsible governmental experts, and the resulting consistency of the reports.

23. Multilingualism was highlighted as an important feature of the Mechanism that allowed the participation of all countries, and it was stressed that the six official languages should be used equally.

iii. Discussion on Executive Summary Template

24. The Secretary explained that the draft executive summary template was aimed at ensuring consistency in the structure of the executive summaries and further informed the Group that the template had been used for the executive summaries that had been finalized in the last few months before the session of the Group, and the Group could thus refer to these executive summaries for a better understanding of how the proposed template would be applied.

25. Many speakers expressed satisfaction with the template prepared by the Secretariat and emphasized its usefulness in practice. A number of other speakers stressed that the template should ensure that the executive summary does not replicate the structure and content of the country review report.

26. It was stressed that the template should be fully consistent with the terms of reference of the Review Mechanism and resolution 4/1 of the Conference. Some speakers expressed the view that the executive summary should adopt a general approach, rather than a detailed account of the implementation of provisions under review, because, they noted, a general wording of the template would allow for its application to both review cycles. Conversely, some expressed the view that the executive summary should lend itself to being read as a stand-alone document and

contain a reasonable amount of detail on the implementation of provisions under review, thus serving its overall usefulness.

27. The Group then approved the structure of the executive summary.

vi. Discussion on the Thematic Implementation Reports

28. The Secretariat summarized the main elements of the thematic implementation reports that contained information on the implementation of chapters III (Criminalization and law enforcement) and IV (International cooperation) of the Convention by States Parties under review in the first and second years of the first cycle of the Review Mechanism.

29. The reports were based on information included in the review reports of 19 States parties that had been completed, or were close to completion, as on 31 May 2012. The reports contained implementation examples, information on successes, good practices, challenges and observations, and a thematic overview of the most salient technical assistance needs, where possible with a regional breakdown.

30. The reports were welcomed as particularly useful to the Group's analytical work, in particular concerning the coverage of substantive issues and the analysis of technical assistance needs.

31. The Group invited a discussion on substantive provisions of the Convention that were addressed in the reports, including illicit enrichment, bribery in the private sector, the liability of legal persons, and privileges and immunities.

32. Speakers shared their countries' experiences in implementing the Convention and highlighted nuances and challenges in implementation, as well as innovative steps that had been taken and recent developments. Ancillary measures, such as asset and income disclosures in the context of illicit enrichment, were discussed. A number of speakers underscored the critical need to enhance international cooperation, in particular in the areas of extradition, mutual legal assistance, asset recovery and technical assistance. In the area of technical assistance, requests for model legislation and a sharing of experiences on the verification of sworn asset declarations were noted.

33. Several speakers underscored the need for effective enforcement of existing laws against corruption, including the availability of relevant statistical information, which was noted as a challenge by some speakers. Several speakers highlighted the role of the secretariat in enhancing knowledge of the Convention and providing technical support to assist States.

34. Speakers also welcomed the preparation of regional addenda for future sessions of the Group, and invited a fuller discussion of the content of such addenda.

vii. Technical Assistance

35. The Group was encouraged to consider the provision of technical assistance for the implementation of the Convention, in response to the needs identified through the Review Mechanism. Reference was made to resolution 3/1, in which the Conference of the States Parties had tasked the Group with following up and continuing the work previously undertaken by the Open-ended Intergovernmental Working Group on Technical Assistance. Furthermore, Resolution 4/1 was recalled, wherein the Conference of States Parties had recognized the continuing and valuable role of technical assistance within the Mechanism, and the importance of its delivery through a three-tiered — global, regional and national — approach.

36. The Group had before it for its consideration a note by the Secretariat on technical assistance in support of the implementation of the Convention (CAC/COSP/IRG/2012/3), containing an updated overview of the response of UNODC to identified technical assistance needs since the fourth session of the Conference of the States Parties. That document provides a description of activities carried out since July 2011, as well as current planning for upcoming delivery of technical assistance by the Office.

37. The speakers appreciated the focus on technical assistance in the thematic reports. They reiterated that technical assistance was an integral component of the Review Mechanism, reaffirmed that the guiding principles of the Mechanism, mainly its being transparent, efficient, non-intrusive, inclusive and impartial, and not producing any form of ranking, were also applicable to the delivery of technical assistance, and recalled the importance of country-led and country-based, integrated and coordinated programming and delivery of technical assistance.

38. Speakers appreciated the three-tiered approach — global, regional and national — to the delivery of technical assistance and noted the important role that UNODC could play as a technical assistance provider. The TRACK portal was highlighted as a resource for technical assistance, as well as the Mutual Legal Assistance Request Writer Tool and the database of central authorities.

39. The representative of UNDP reported that technical assistance in support of the Convention was a high priority for his organization, which was implementing related programmes in approximately 135 countries. He welcomed the ongoing coordination between UNODC and UNDP and noted with appreciation the efforts of UNODC regional anti-corruption advisers.

viii. Briefing for Non-Governmental Organizations

40. The first briefing for NGOs took place at the session and led to the recommendation that measures could be taken to move away from the delivery of statements and towards a more constructive dialogue between NGOs and States in future briefings. It was also stated that future briefings they would welcome the provision of more concrete information by NGOs on their activities contributing to the review process, technical assistance activities and the implementation of the Convention.

III. Sixth Intersessional Meeting of the Open-ended Intergovernmental Working Group on Asset Recovery (Vienna, 30-31 August 2012)

A. Background of the Intergovernmental Working Group on Asset Recovery

41. Vide its resolutions 1/4, 2/3, 3/3 and 4/4, the Conference of the States Parties to the United Nations Convention against Corruption established and continued the work of the Open-ended Intergovernmental Working Group on Asset Recovery. Vide, resolution 3/3, the Conference welcomed the conclusions and recommendations of the Working Group (CAC/COSP/WG.2/2009/3) and noted with interest the background paper prepared by the Secretariat on the progress made on the implementation of those recommendations (CAC/COSP/2009/7).

42. In its resolution 4/4, the Conference requested the Working Group to prepare the agenda for the multi-year work plan to be implemented until 2015.

43. Also in its resolution 4/4, the Conference decided that the Open-ended Intergovernmental Working Group on Asset Recovery should continue its work to advise and assist the Conference in the implementation of its mandate with respect to the return of the proceeds of corruption and should hold at least two meetings prior to the fifth session of the Conference, within existing resources.

B. Agenda of the Sixth Session of the Working Group

44. The agenda of the Sixth Session of the Working Group contained the following substantive items:

a. Presentation of the proposed multi-year work plan for the activities of the Working Group, covering the period 2012-2015.
b. Overview of progress made in the implementation of Conference resolution 4/4 and the recommendations of the Working Group.
c. Thematic discussion on cooperation in confiscation: article 54 (Mechanisms for recovery of property through international cooperation in confiscation) and article 55 (International cooperation for purposes of confiscation).

d. Forum for discussions on practical aspects of asset recovery, including challenges and good practices.
e. Forum for discussions on capacity-building and technical assistance.

C. Highlights of the Sixth Session of the Working Group

i. Presentation of the proposed multi-year workplan for the activities of the Working Group, covering the period 2012-2015

45. The Working Group considered the draft proposed multi-year workplan, prepared by the Secretariat on the basis of guidance provided by the Working Group at its previous meetings as well as proposals submitted by several States Parties, for the activities of the Working Group for the period 2012-2015. The draft workplan sought to ensure adequate preparation for the review of chapter V in the second cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption and to provide opportunities for discussion in the Working Group on practical aspects of recovery, including challenges and good practices, and on capacity-building and technical assistance.

46. After revisions suggested by speakers, the proposed revised workplan was considered and adopted by the Working Group. It was noted that the workplan for the years 2014 and 2015 was subject to deliberations during the fifth session of the Conference, in 2013.

47. The standing items for future meetings, consist of: Overview of progress made in the implementation of asset recovery mandates; Forum for advancing practical aspects of asset recovery, including challenges and good practices; Forum for discussions on capacity-building and technical assistance; and, Forum for updates and developments on thematic discussions of the previous session. The proposed topics for the thematic discussions of 2013, 2014 and 2015 were respectively: article 56 (Special cooperation), article 58 (Financial intelligence unit), article 54 (Mechanisms for recovery of property through international cooperation in confiscation), and article 55 (International cooperation for purposes of confiscation); article 52 (Prevention and detection of transfers of proceeds of crime) and rticle 53 (Measures for direct recovery of property); and, article 57 (Return and disposal of assets) and other relevant articles.

ii. Overview of progress made in the implementation of Conference resolution 4/4 and the recommendations of the Working Group

48. The Secretariat provided an overview of the note by the Secretariat entitled "Strengthening international asset recovery efforts: progress report on the implementation of asset recovery mandates" (CAC/COSP/WG.2/2012/3). The note was structured according to the three functions of the Working Group: developing

cumulative knowledge in the field of asset recovery; building confidence and trust between requesting and requested States; and technical assistance, training and capacity-building. The comprehensive self-assessment checklist was highlighted as a useful information-gathering tool for States in that respect.

49. Speakers commended the work undertaken to implement chapter V of the Convention and called for further activities in support of States' efforts in that respect. The need to prepare for the review of implementation of chapter V in the second cycle, starting in 2015, was stressed. Speakers welcomed the role of UNODC and the joint UNODC/World Bank StAR Initiative. Speakers referred to the work undertaken by the International Centre for Asset Recovery of the Basel Institute on Governance as well as the Lausanne Process and its informal platform of experts from requesting and requested States.

50. The Secretariat presented the work of the Secretariat on the expansion of the Mutual Legal Assistance Request Writer Tool with added asset recovery features. It was stressed that the tool was currently in its final preparation stage and would be ready by the resumed third session of the Implementation Review Group in November 2012. The tool in its expanded form included different steps of the asset recovery process under which specific types of mutual legal assistance would be available. If desired, the Secretariat could develop a generic template, to be linked to the enhanced tool, with a view to assisting countries in compiling relevant information.

51. Speakers commended the work of the Secretariat on the enhancement of the Mutual Legal Assistance Request Writer Tool and the efforts of the Secretariat for the dissemination of asset recovery information and suggested distributing via the UNODC website the information about asset recovery training sessions and various bodies in charge of asset recovery.

iii. Thematic discussion on cooperation in confiscation: article 54 (Mechanisms for recovery of property through international cooperation in confiscation) and article 55 (International cooperation for purposes of confiscation)

52. Panelists from the United States reported positive experiences with respect to the use of non-conviction-based forfeiture. The findings were based on four high-level corruption asset recovery cases. In three of the cases, the US brought domestic non-conviction-based confiscation actions. In the fourth, it enforced a foreign restraining order. In response to a court challenge, US law had been amended to allow for the enforcement of foreign seizure or freezing orders prior to a final confiscation judgement in the requesting country.

53. The panelists further highlighted that in some cases, investigators or prosecutors had been unwilling to provide evidence due to fear of reprisals, or evidence had been difficult to evaluate. Furthermore, in cases in which the official being investigated had been in power for many years, it was difficult to determine the legal or illegal origin of the property. Dual criminality was considered a challenge particularly with regard to the offences of false financial disclosure statements, malfeasance and illicit enrichment, which were not offences for which forfeiture could be ordered in the United States.

54. The panelist from France reported that the French legal system was based on criminal conviction, and confiscation was considered an additional sanction. However, confiscation could be carried out on the basis of requests for mutual legal assistance, following rulings by the Court of Cassation in 2003 and as confirmed in 2009. A request for civil confiscation could be executed in France if one of two conditions were met: if the decision underlying the request for confiscation was final, binding and its execution would not be against public order; or if the proceeds could have been confiscated under similar proceedings under French law.

55. Forfeiture under French law could be divided into three main parts: first, the identification of the proceeds of crime; second, seizure; third and last, confiscation. Recent legislation had made it possible to confiscate the equivalent value of the assets. In 2010, France had established a specialized agency for the recovery and management of seized and confiscated proceeds (AGRASC), which had, since its establishment, dealt with 10,000 cases involving 400 million euros worth of confiscated assets.

56. The panelist from Indonesia highlighted a number of difficulties relating to asset recovery, particularly, the transnational nature of corruption and differences in legal systems. In view of the difficulties encountered, Indonesia had taken a more active approach by creating the Asset Recovery Task Force. Further plans included the creation of an asset recovery office, with more responsibilities and powers. Based on the experiences of Indonesia with various agencies being involved in the asset recovery process, the panelist highlighted the value of inter-agency coordination.

57. The representative of Brazil highlighted that three specialized groups had been created within that institution: an international affairs group, responsible for initiating civil law suits abroad, as well as the execution of the assistance requests received by Brazil; a proactive group on combating corruption, pursuing mainly the domestic recovery of assets derived from public funds; and the group of asset recovery of major debtors, focusing on situations involving federal agencies and public foundations. The panelist also described successful recent experiences with the tracing and freezing of funds pursuant to Security Council resolutions 1970 (2007) and 1973 (2007). The panelist noted that delays in the Brazilian criminal procedures were a main challenge in asset recovery proceedings.

58. In the ensuing discussion, speakers recognized the growing trend towards non-conviction-based forfeiture in a number of countries. Some reported about their countries' concerns with regard to non-conviction-based forfeiture legislation vis-à-vis the right of ownership and the presumption of innocence. While the European Court of Justice, in a recent ruling, had found that non-conviction-based forfeiture did not constitute a violation of the right of ownership or the presumption of innocence, agreement to a European Union-wide directive had not yet been reached as views diverged considerably. Speakers also highlighted the importance of spontaneous disclosure of information on assets by the States in which the assets were located.

iv. Forum for discussions on practical aspects of asset recovery, including challenges and good practices

59. The panelists from Belgium stressed the hindrance by multiplication of parallel national and international procedures in each case. Therefore, an international standard procedure based on the principles of State responsibility, ethical conduct, confidence-building among partners and reasonable delay was considered the most efficient way to ensure successful asset recovery. The process would consist of three phases: the alerting stage, the investigation phase and the return phase. It was stressed that all States would participate in such cooperation based on their sovereignty and in the framework of their national law, and that no deadlines would be set for the different actions in the framework of the proposed cooperation.

60. The panelist from the Islamic Republic of Iran highlighted the estimated volume of bribery at the global level, as well as the portion of illicit funds transferred to other jurisdictions, and the relatively limited success of asset recovery efforts to date. He stated that innovative legal regime had been only partially successful in bringing about the recovery of assets, with the estimated global volume of assets returned to requesting countries not exceeding $5 billion. He underscored that the most effective mechanism for protecting public funds continued to be prevention.

61. He further highlighted practical, procedural and substantive barriers to the successful pursuit and recovery of assets and provided some suggestions for the removal of such barriers. At the domestic level, he stressed the strategic importance of article 31, paragraphs 7 and 8, of the Convention with a view to ensuring efficient access for law enforcement authorities to records held by financial institutions, as well as the shifting to the owner of the assets the burden of proof with regard to the licit origin of those assets. With a view to tackling some of those challenges, he proposed to fast-track the establishment of a network of asset recovery focal points, to strengthen the role and powers of financial intelligence units in exchanging information and to enhance informal channels of communication and networking among asset recovery practitioners.

62. The panelist referred to three aspects: the quality of information, the mechanisms for the transmission of such information, and possible impediments to transmission. On the first aspect, the importance of determining the origin of the assets, namely, which bank accounts had been used to acquire them, and the beneficial ownership of such accounts, were the main types of information needed. Secondly, mechanisms for the transmission of such information were to be viewed both at the domestic and international levels. Thirdly, the speaker highlighted possible impediments, namely, the incompatibility of legal frameworks, issues concerning in rem as well as value-based confiscation, and challenges in carrying out mutual legal assistance.

63. In the ensuing discussion, various speakers expressed their interest in the asset recovery initiative described by the panelists from Belgium and in discussing it further in future meetings of the Group. They thought that the approach could enhance information-sharing and case coordination while providing for flexibility due to the ad hoc nature of the cooperation. With regard to the alerting function, it was pointed out that it would not fall under the current mandate of UNODC or the StAR Initiative.

v. Forum for discussions on capacity-building and technical assistance

64. The panelist from Uganda outlined the assistance provided to the countries in the region through the training-of-trainers programme organized jointly with the East African Association of Anti-Corruption Authorities and the StAR Initiative, in which five practitioners from each East African country had participated. The speaker reported that, as a concrete result of the training, a Ugandan magistrate for the first time issued a confiscation order as part of a penalty in a corruption case. She highlighted that the Mechanism for the Review of Implementation of the United Nations Convention against Corruption had allowed her country to identify needs for technical assistance, and that as a result, along with other national initiatives, a UNODC initial assistance programme had begun with the Inspector General of the Government.

65. The panelist from the United Kingdom reported on the three national institutions, namely the Metropolitan Police, the City of London Police and the Crown Prosecution Service Confiscation Unit allocated specific posts for cooperation with developing countries for the purposes of asset recovery, financed by the Department for International Development. The system was highly successful, and the value of assets returned had been far greater than the investment.

66. The panelist from the World Bank described the different levels of capacity-building currently provided by the StAR Initiative[2]. A number of countries received general capacity-building training in the areas of investigation, prosecution and international cooperation for asset recovery. Further technical assistance activities at a national level addressed preventive aspects such as policy advice on financial disclosure systems and on politically exposed persons. Further, an increasing number of countries showed interest in hands-on assistance based on specific cases, including advice on strategic cases. Examples of case-specific assistance included the work of the StAR Initiative in Egypt and Tunisia.

67. In the ensuing discussion, speakers mentioned the problem of fluctuation of staff, which could limit the effectiveness of training programmes. In addition, the cost of some capacity-building events presented a challenge for the participation of persons from developing countries. In that context, speakers mentioned time constraints of the training sessions and one-off training sessions, especially in the complex field of asset recovery, which required a longer-term, sustainable approach that was closely linked to other criminal justice challenges. The training-of-trainers programme was commended, as it could address some of the challenges mentioned.

IV. First Session of the Open-ended Intergovernmental Expert Meeting on International Cooperation (Vienna, 22-23 October 2012)

A. Background of the Meeting

68. At its Fourth Session, held in Marrakech, Morocco, from 24 to 28 October 2011, the Conference of the States Parties to the United Nations Convention against Corruption ("CoSP") decided, vide resolution 4/2, entitled "Convening of open-ended intergovernmental expert meetings to enhance international cooperation", to convene open-ended intergovernmental expert meetings.

69. The stated purpose of these meetings was to: (a) assist the Conference in developing cumulative knowledge in the area of international cooperation; (b) assist it in encouraging cooperation among relevant existing bilateral, regional and multilateral initiatives and contribute to the implementation of the related provisions of the United Nations Convention against Corruption under the guidance of the Conference; (c) facilitate the exchange of experiences among States by identifying challenges and disseminating information on good practices to be followed in order

[2] The Stolen Assets Recovery Initiative (StAR), which is an initiative jointly developed by United Nations Office on Drugs and Crime (UNODC) and the World Bank, was formally launched in September 1997. The main aim of this initiative is to help developing countries recover stolen assets. Accordingly it is aimed at undertaking international efforts to deter illicit flows of the proceeds of corruption and to facilitate asset recovery across a broad front. The legal backbone of this initiative is the UNCAC, Chapter V of which is devoted to asset recovery and is the most far reaching and innovative international accord on the subject.

to strengthen capacities at the national level; (d) build confidence and encourage cooperation between requesting and requested States by bringing together relevant competent authorities, anti-corruption bodies and practitioners involved in mutual legal assistance and extradition; and, (e) assist the Conference in identifying the capacity-building needs of States.

70. Pursuant to Resolution 4/2, the First Session of the Open-Ended Inter-Governmental Experts Meeting on International Cooperation was convened in Vienna between 22 October and 23 October 2012.

B. Agenda of the Meeting

71. The substantive portion of the agenda for the Session focused on three main topics: 1) Modalities of international cooperation under chapter IV of the United Nations Convention against Corruption ("UNCAC"); 2) Technical assistance for capacity-building: priorities and needs; and, 3) Future action to enhance international cooperation under the United Nations Convention against Corruption.

72. The first topic, dealing with the modalities of international cooperation under chapter IV of the UNCAC saw presentations given by the Secretariat on the findings resulting from the completed reviews of the first and second years of the first cycle of the Review Mechanism. These findings focused on the implementation of Articles 44 and 46 of the UNCAC, which deal with Extradition and Mutual Legal Assistance Respectively. The presentation of these thematic reports by the Secretariat was followed by a round table discussion about the topic.

C. Highlights of the Meeting

i. Modalities of international cooperation under chapter IV of the United Nations Convention against Corruption

a. Extradition

73. The thematic report presented by the Secretariat revealed that it was generally agreed upon by State Parties that it was possible for the UNCAC to be used as a legal basis for extradition, despite this being rarely been done in practice. While most States gave extraditable offences a general definition of "offences punishable by deprivation of liberty of at least one year", which includes many corruption-related offences, some states preferred to rely on a list of specifically extraditable offences. However, the State Parties unanimously agreed that corruption-related offences were not considered political offences and thus there was little scope for the refusal of extradition on those grounds. Half of the reviewed States allowed the simplified extradition proceedings in instances where the offender had consented to extradition. The report also revealed a general distinction between civil-law countries and

common-law countries with regard to the incorporation of treaties into domestic legal systems.

74. The Round-Table discussion confirmed that several States' national legislations allowed for the use of the Convention as a legal basis for extradition, but few States had adopted that practice as a means of facilitating extradition. Other legal bases for extradition, such as bilateral and regional treaties, reciprocity and *ad hoc* arrangements were also referenced. Speakers provided overviews of their States' practices and legislations related to extradition.

75. There was also discussion of the obstacles facing extradition such as national legal provisions not being applied; complex or lack of established procedures; incomplete information; poor quality translations particularly of legal terminology; "fishing expeditions" where the sought person could not be located; and a lack of open communication between requesting and requested States. The unresponsiveness of some States to requests and denial for procedural reasons were also mentioned. Some speakers noted that the non-extradition of nationals had posed a challenge to effective extradition for their countries.

76. The importance of arrangements to facilitate international cooperation was highlighted. Speakers emphasized the usefulness of networking and personal contacts in successful international cooperation. Liaison magistrates were effective between close partners, and networks of liaison focal points provided a cost-effective alternative to posting liaison magistrates abroad.

77. The necessity to develop capabilities, from the provision of model laws and the simplification of extradition proceedings and evidentiary standards to advisory services and training sessions for central authorities, as well as raising greater awareness among national and international actors in the area of extradition was emphasized. The need to initiate open dialogue between requesting and requested States to expedite extradition proceedings was also highlighted.

b. Mutual Legal Assistance

78. The thematic report on Mutual Legal Assistance revealed that many aspects of mutual legal assistance were being addressed in similar manners by reviewed States, including: the provision of mutual legal assistance for offences involving legal persons; the spontaneous transmission of information often being done without reference to a specific regulation in domestic law; dual criminality requirements either not being applied to mutual legal assistance requests or being applied only to a limited extent; and the grounds for refusal of a request being generally the same in most States. Aspects where no uniformity was observed included: the purposes for which mutual legal assistance could be requested; the acceptance of verbal requests;

the use of videoconferences; and the practice regarding consultations with requesting States before refusing a request or postponing its execution.

79. The challenges presented by the concept of liability of legal persons and the correct identification of the relationship between the natural and the legal person were noted in the discussion. Many speakers reported that their countries rendered mutual legal assistance on the basis of reciprocity and treaty agreements. The use of the UNCAC as a supplementary measure to bilateral treaties and as a basis for amending outdated treaties was suggested.

80. The less strict standards for mutual legal assistance, compared to extradition, were noted and flexibility was encouraged. There was mixed opinion on the requirement of dual criminality for mutual legal assistance, particularly in the obtaining of evidence and freezing of funds. It was noted that some courts had held that the determination of whether dual criminality existed should be based on the laws in effect at the time of the decision to provide mutual legal assistance rather than at the time of the commission of the offence, since due process concerns were already addressed by the fact that the act was considered a criminal one in the country in which it occurred.

81. The role of central authorities in providing mutual legal assistance in accordance with article 46, paragraph 13, of the UNCAC was highlighted. It was noted that the direct transmission of requests between central authorities produced swifter results than communications through diplomatic channels. Designation of one institution as the central authority for all related international legal instruments was recommended. The crucial importance of information sharing and coordination at the national level was also noted.

82. Practical challenges such as: strict legal requirements that exact banking information needing to be provided before funds could be located or frozen; the admission of videoconferences in mutual legal assistance cases; and, problems related to translation and identification of persons were also noted.

83. It was recognized that networks such as IberRed and the European Judicial Network, were useful for enhanced informal information exchange and consultation. It was suggested that regional networks should be increasingly interlinked in order to move towards global information exchange. The challenges of exchanging information relating to corruption cases were noted, as was the role that INTERPOL could play in facilitating the global exchange of information. Increased use of tools such as secure information platforms and manuals on mutual legal assistance prepared in the context of the Group of Eight and the Group of Twenty were encouraged.

ii. Technical assistance for capacity-building: priorities and needs

84. The Secretariat provided a background presentation on priorities and needs for technical assistance that presented statistics on the technical assistance needs resulting from 24 country reviews on the implementation of chapter IV of the Convention. Most requests for assistance were centered on legislative drafting, legal advice, model treaties and capacity-building. Specific requests related to substantive expertise and assistance with foreign languages in order to remove obstacles to communication between central authorities.

85. The relevant tools developed by UNODC, such as the online directories of competent national authorities and the Tools and Resources for Anti-Corruption Knowledge (TRACK) portal (www.track.unodc.org), as well as the Mutual Legal Assistance Request Writer Tool, and several UNODC publications on international cooperation were explained.

86. In the ensuing debate, the need for long and short-term technical assistance for members of the judiciary, police and other practitioners of their countries, who needed to be made aware of international best practices and to acquire a better knowledge of legal systems in order to deal effectively with corruption investigations and the preparation of international cooperation requests was mentioned. The impact of communication challenges between central authorities was also noted. Several speakers reported on technical assistance currently provided to their countries. Representatives of international organizations shared experiences with regard to programmes, focusing on capacity-building provided to different categories of practitioners.

iii. Future action to enhance international cooperation under the United Nations Convention against Corruption

87. Many speakers addressed the synergies between the work of the meeting of experts and the Working Group on International Cooperation and expressed their preference for organizing joint meetings of the two groups in the future. The Chair noted that the authority to take action with regard to combining the meetings of the two groups lay with the conferences of the parties to the two conventions, while the working groups could make recommendations to that effect only for the consideration of the conferences. The close thematic links between the work of the meeting of experts and the Open-ended Intergovernmental Working Group on Asset Recovery was also highlighted.

88. Speakers emphasized that the agenda of the meeting should be conducive to discussions among expert practitioners to exchange views on practical problems and advance towards concrete solutions to international cooperation challenges. It was also suggested to organize a meeting of central authorities.

D. Major Outcomes of the Meeting

89. In the context of the review process under Chapter IV, participants noted the lack of information provided by States Parties on the practical implementation of chapter IV, including statistical information which was regarded as an important addition to the information on legislative provisions and the meeting recommended that States Parties consider adopting a common approach on the gathering of statistics.

90. The meeting also recommended that the Conference consider calling upon States Parties to further explore ways of strengthening international cooperation by: (a) Using the Convention as a legal basis for international cooperation; (b) Raising awareness among their relevant authorities of the modalities of international cooperation and the terms of the Convention; (c) Continuing to negotiate bilateral and regional treaties to facilitate cooperation; (d) Encouraging adherence to relevant regional treaties; (e) To the degree feasible, within their domestic laws, expediting procedures and simplifying evidentiary requirements for extradition.

91. The meeting proposed that it further explore ways and means of effectively implementing the requirement of article 44, paragraph 17, of the Convention to consult with the requesting State before refusing extradition, particularly in cases where the decision to deny the requests rested with the judicial authority.

92. The meeting recommended that States parties that had not yet done so designate a central authority responsible for requests for mutual legal assistance in accordance with article 46, paragraph 13, of the Convention.

93. The meeting finally requested the secretariat to send a note verbale to Member States soliciting information on the concept of the liability of legal persons in the context of the provision of mutual legal assistance.

94. On 23 October 2012, the meeting of experts adopted the report on its first meeting (CAC/COSP/EG.1/2012/L.1 and Add.1-2).

V. Comments and Observations of AALCO Secretariat

95. The significance of the United Nations Convention against Corruption (UNCAC) can hardly be exaggerated. With 167 State Parties (as of 29 May 2013), the UNCAC has presented the international community with opportunities for major positive changes not only with respect to the fight against corruption and related crimes, but much more broadly for criminal justice, security and development. It needs to be highlighted here that corruption is not a problem that concerns only a special group of vulnerable countries. All countries are affected and all countries are involved in an interconnected way in our globalised world.

96. In essence, the UNCAC offers some general principles and concrete steps through which national and global governance can be greatly enhanced. The full and effective implementation of this consensus document has the potential to boost the legitimacy of international legal systems and norms. This is the reason why AALCO has been of the firm belief that the UNCAC should be given the highest priority by its Member States. The UNCAC represents the key consensus, commitment and framework that we have as a global community in the fight against corruption. This is also the reason why the UN Convention on Transnational Organised Crime (UNTOC) and its Protocols require real support and collective action from both governments and civil society.

97. The UNCAC obliges States that have ratified or acceded to it to prevent and criminalize corruption, promote law enforcement and international cooperation, cooperate for the recovery of stolen assets, and enhance technical assistance and information exchange. To keep up the pressure to follow through, governments had created a review mechanism to check country compliance with the UNCAC and it had started functioning from the year 2010. It has just commenced the third year of review. Even while welcoming this process, AALCO is concerned at how difficult it is for civil society groups and other stakeholders to contribute to the review process and to learn about its results. The UNCAC calls for transparency and civil society participation in the fight against corruption but (apparently) this is not being practiced systematically in the review process for that same Convention.

98. The UNCAC along with the UNTOC has forced many countries to introduce legislative reforms in the area of anti-corruption. But most countries are far from doing enough to address corruption. Even where the right laws are in place, the authorities in too many countries fail to enforce them against high-level officials who squander their country's resources in cahoots with businessmen, financial services and gangsters. And where they try, they are still often stymied by lack of assistance from other countries. It is for reason that the Group of 20 Countries (G-20) had acknowledged in its June 2012 Los Cabos Communiqué, that " the biggest challenge in the fight against corruption is "closing the implementation and enforcement gap".

99. The UNCAC's monitoring mechanism, based on a mutual evaluation or peer review process, is considered more rigorous than the self evaluation method, but more lenient than the expert review process. All-in-all, peer review can be quite effective, especially when it contains an element of public pressure. This aspect, although lacking within the UNCAC, can be remedied in the future by namely making country reports available to the public and by including civil society organizations in the review process. Furthermore, by giving the UNCAC's COSP investigatory powers similar to the IACAC's Committee of Experts, the review process would acquire a more adversarial quality.

100. Be that as it may, some of the measures that could be taken by the international community and the State Parties to UNCAC are as follows:

101. There is a need to increase the involvement of civil society in the mechanism to review compliance of states with UNCAC provisions, to get better and more credible results. NGOs and other stakeholders should be able to make inputs to country reviews. And NGOs should have observer status in the Implementation Review Group, which is the oversight body for the review process – this is called for by the rules of procedure but is not being systematically practiced. The UN and States Parties should also ensure that the Civil society unit of UNODC receives regular, consistent and sufficient funding for its operations in order to maintain independence and to efficiently deliver on its mission.

102. There is a need to reinforce the implementation of UNCAC. Member states that have not yet ratified the UNCAC should do so promptly and those that have ratified should move from laws to practice. They should also involve civil society and other stakeholders in the implementation process.

103. As regards the need to reduce secrecy and improve transparency, Member States (in line with UNCAC) should improve access to information generally and with regard to criminal law enforcement should gather and make available data on the corruption cases they are investigating or prosecuting. Citizens must be enabled, through improved access to information, to assess their own government's efforts to curb corruption. Governments should also collect and make accessible information on the real and beneficial owners of the shell companies that provide cover to the corrupt and the criminal. This will help uncover concealed corruption funds.

104. The need for international cooperation is critical in anti-corruption efforts. This would enable improving the cross-border exchange of information to support investigation and prosecution. Corruption and crime are not anymore limited by national boundaries. Authorities across different jurisdictions should assist each other's judicial systems in the prosecution and punishment of corruption. It is important to stop criminals from escaping across borders with the proceeds of corruption. In this regard, as we have narrated, the First Session of the Inter-Governmental Experts Meeting on International Cooperation, recommended States parties explore ways of strengthening international cooperation by using the Convention as a legal basis for international cooperation, raising awareness among their relevant authorities, including central authorities and the judiciary, where appropriate, of the modalities of international cooperation and the terms of the Convention, including its use as a legal basis for international cooperation; where appropriate, continuing to negotiate bilateral and regional treaties to facilitate cooperation in line with the Convention; encouraging adherence to relevant regional treaties; to the degree feasible, within their domestic laws, expediting procedures; and, simplifying evidentiary requirements for extradition.

105. Asset recovery constitutes a fundamental principle of the UNCAC. Building on previous international agreements, UNCAC provides a robust framework for international asset recovery embodied in Chapter V of UNCAC. Indeed, over the last twenty years, the international community has gradually put in place a framework of international agreements and standards dealing with anti-corruption, law enforcement and anti-money laundering issues. Asset recovery lies at the intersection of these three agendas. In this regard the Working Group encourage considering making a recommendation to the States Parties to provide practical information on asset recovery. If desired, a generic template could be created, with a view to assisting countries in compiling relevant information.

106. It also needs to be stressed here that AALCO would continue to monitor the developments occurring in relation to various aspects of the implementation of the UNCAC in future as well with a view to help identify the critical issues that emerge therefrom. This would enable the Secretariat of AALCO to help its Member States deal with the various aspects of anti-corruption efforts.

Annex I

Participation of the AALCO Member States in the UN Convention against Corruption

Status: Signatories 140, Parties 167 [as of 29 May 2013[3]]

Ratification Status of African Countries:

Country	Signature	Ratification (R)/Accession (A)
Botswana		**A**
Cameroon		**R**
Egypt		**R**
Gambia	**-----**	**----**
Ghana		**R**
Kenya		**R**
Libya		**R**
Mauritius		**R**
Nigeria		**R**
Senegal		**R**
Sierra Leone		**R**
Somalia	**----**	**----**
South Africa		**R**
Sudan	**S**	
Tanzania		**R**
Uganda		**R**

[3]The information contained in this Chart has been accessed from the web site of the United Nations Office on Drugs and Crime: www. Unodc.org/unodc/ en/treaties/CAC/signatories/htm

Ratification Status of Asian Countries:

Country	Signature	Ratification (R)/Accession (A)
Bahrain		R
Bangladesh		A
Brunei		R
China P.R.		R
Cyprus		R
India		R
Indonesia		R
Iran		R
Iraq		A
Japan	S	
Jordon		R
Korea D.P.R	----	----
Korea Rep.of		R
Kuwait		R
Lebanon		A
Malaysia		R
Mongolia		R
Myanmar		R
Nepal		R
Oman	----	----
Pakistan		R
Palestine	----	----
Qatar		R
Saudi Arabia		R
Singapore		R
Sri Lanka		R
Syria	S	
Thailand		R
Turkey		R
U.A.E		R
Yemen		R

Annex-II

SECRETARIAT'S DRAFT
AALCO/ RES/ DFT/ 52/ S 11
12 SEPTEMBER 2013

CHALLENGES IN COMBATING CORRUPTION: THE ROLE OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

(Deliberated)

The Asian-African Legal Consultative Organization at its Fifty-Second Session,

Having considered the Secretariat document contained in No. AALCO/52/ HEADQUARTERS /2013/ S 11;

Deeply concerned about the impact of corruption on the political, social and economic stability and development of societies;

Bearing in mind that the prevention and combating of corruption is a common and shared responsibility of the international community, necessitating cooperation at the bilateral and multilateral levels;

Recalling resolution 3/1 adopted by the Conference of State Parties to the United Nations Convention Against Corruption [UNCAC] at its third meeting held in November 2009 at Doha, by which the Conference had established the Mechanism for the Review of Implementation of the United Nations Convention against Corruption and charged the Implementation Review Group with having an overview of the review process,

1. **Welcomes** the work undertaken by the Implementation Review Group and noting with appreciation the commitment of States Parties to the country review process in their capacities both as States parties under review and as reviewing States parties;

2. **Takes note with appreciation** the work of the Working Group on Asset Recovery at its six inter-sessional meetings;

3. **Encourages** Member States of AALCO who have not done so to consider ratifying/acceding to the United Nations Convention against Corruption so as to strengthen the fight against corruption;

4. **Strongly encourages** the Member States of AALCO to afford one another the widest measure of support, including training, exchange of relevant experience and specialized knowledge to facilitate international cooperation in line with the relevant UNCAC's provisions;

5. **Requests** the Secretariat of AALCO to consider the possibility of holding training programmes/expert meetings/seminars with relevant international organizations working in this area on the various issues of concern obtaining under the UNCAC;

6. **Decides** to place this item on the provisional agenda at its Fifty-Third Annual Session.