

of promoting ratification of important international conventions in the field of protection of the marine environment.

A second meeting of the Expert Group which was held in 1979, identified areas for priority consideration. A third meeting of the Expert Group which was held in 1982 in co-operation with IMO and UNEP considered the ways and means to promote ratification of the conventions dealing with the prevention and control of marine pollution. Another Meeting was held in Jakarta in 1984 to consider the revision of IMO Convention on Civil Liability and the Fund Convention. In 1989, the AALCC took up the issues concerning ban on transboundary movement of hazardous wastes.

The next phase of the AALCC's initiatives began in 1990 against the backdrop of the United Nations decision to convene the Rio Conference on Environment and Development in 1992. The AALCC Secretariat was actively involved in the preparatory phase and prepared extensive material to assist the Member Governments. As a follow-up to the UNCED, the AALCC Secretariat has been engaged in monitoring the developments in the context of the implementation of Agenda 21 and the three recent environmental conventions namely, the Framework Convention on Climate Change, the Bio-diversity Convention and the United Nations Convention to Combat Desertification.

It would be seen from the foregoing account that the AALCC has kept pace with the developments in the field of environment and took up issues of topical importance. It would, therefore, be desirable to give impetus to AALCC's work and identify areas where it could provide useful and productive service to its Member Governments.

Broadly, some of the areas which the Member Governments may wish to consider for the future work-programme of the AALCC Secretariat could be as follows:

(i) Preparation of studies on important international environmental conventions with a view to promoting their wider adherence by the AALCC Member States;

(ii) Establishment of co-operative programmes with the United Nations Agencies and other Inter-governmental Organizations and research institutions engaged in activities related to environmental matters. In that context, co-operation with UNEP could be most useful in matters concerning capacity building;

(iii) Organization of training programmes for the officials of the Member Governments to promote awareness and skills to deal with legal problems in the field of environment; and

(iv) Constitution of a panel of legal experts from the AALCC Member States whose services could be utilized by the Member Governments.

The implementation of such a vast programme would be possible only when there is financial and material support from the Member Governments. It may be recalled that the Committee has already established a Special Environment Fund in 1991. The Governments of Saudi Arabia and Myanmar contributed US \$ 25,000 and US \$ 500 respectively, to this Fund. This was utilized to meet the expenses of participation of the Secretariat officials in the environmental meetings during 1992 and 1993. The Fund now needs replenishment. The Committee, at its Doha Session urged the Member Governments to consider making voluntary contributions to the Special Fund on Environment. This would help immediately to launch new initiatives related to the AALCC's work programme on Environmental Law, particularly the convening of a meeting jointly with the UNEP.

## VII. International Trade Law

### (i) Introduction

#### A. Legislative Activities of the United Nations and other Organizations concerned with International Trade Law

The Secretariat presented a report on the recent legislative developments in the field of international trade and commerce. The purpose of such reports is to keep the Member Governments abreast with the recent legislative developments in this area in such organizations as UNCTAD, UNCITRAL, UNIDO, UNIDROIT and the Hague Conference on Private International Law.

#### B. WTO As a Framework Agreement and Code of Conduct for the World Trade

As from 1 January 1995, the GATT structure has been replaced by the World Trade Organization (WTO), a new international economic organization. GATT lacked any permanent organizational and institutional structure. This lacuna has been removed in WTO with a proper regulation of membership, including accession, withdrawal and suspension. The note prepared by the Secretariat outlined the role of the WTO as a framework agreement and code of conduct for the world trade with a view to inviting views of the Member Governments as to what areas needed to be undertaken for study by the AALCC Secretariat.

#### Thirty-Fifth Session : Discussions

The *Deputy Secretary-General* Ambassador Wafik Zaher Kamil while introducing the Secretariat report on the item stated that the Secretariat study covered the recent legislative activities of UNCITRAL, UNCTAD, UNIDO and UNIDROIT. The activities of the Hague Conference on Private International Law could not be covered as relevant information was not available with the Secretariat. He pointed out that the UNCITRAL's work was focussed on independent guarantees and stand-by letters of credit, a

Model Law on EDI and Related Means of Communication; Guidelines on Arbitral Proceedings; Cross-border Insolvency; Model Law on Assignments; and BOT Projects. Its work on independent guarantees and stand-by letters of credit had recently culminated in the adoption of a United Nations Convention on Independent Guarantees and Stand-by Letters of Credit.

As for the legislative work of UNCTAD, the Deputy Secretary-General pointed out that the Secretariat study outlined the recent developments in the areas of commodities, transfer of technology, restrictive business practices, ECDC and maritime and multimodal transport of goods.

As for the legislative work of UNIDO, the Deputy Secretary-General stated that this had mainly consisted of preparation of model contracts, checklists of contractual clauses, and manuals intended to assist the developing countries in their industrial and infrastructure development.

As for the work of UNIDROIT, the Deputy Secretary-General stated that the Secretariat report outlined the progress made on such topics as international interests in mobile equipment, franchising agreements, programme of legal co-operation and the establishment of a UNIDROIT databank on uniform law.

The *Observer for UNIDROIT* in her presentation gave an account of the UNIDROIT's activities completed since the last meeting attended by them in Kampala (1993) or still underway. The items concluded included the adoption by a diplomatic conference of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the UNIDROIT Principles of International Commercial Contracts.

The Observer stated that the aim of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was twofold: in the first place it sought to deal with the technical problems resulting from differences among national rules and to draw upon the progress that had been permitted by evolution of ideas; in the second place, it was intended to contribute to fight against the increase in the illicit traffic in cultural objects and to show how the national character of the protection of cultural heritage might be adapted to, or accompanied by the growth of solidarity between States. She pointed out that the countries which had since signed the Convention included Burkina Faso, Cambodia, Ivory Coast, Croatia, France, Guinea, Hungary, Italy, Lithuania, Zambia, Georgia and Finland and that the Convention required 5 ratifications/accessions to enter into force.

The Observer further stated that the UNIDROIT Principles constituted a system of rules of contract law specifically adapted to the special

requirements of modern commercial practice which might in a number of important ways be of service to the international community. They might in particular be chosen by the parties as the law governing their contract or referred to by arbitrators in the settlement of disputes; be used as a means of interpreting or supplementing existing international uniform law instruments such as the 1980 United Nations Convention on Contracts for the International Sale of Goods and also serve as a model for international legislators when drafting new legal instruments or for national law-makers when adapting domestic law to meet modern requirements.

The Observer pointed out that the ongoing items in UNIDROIT included the international interests in mobile equipment and franchising agreements. While on the former item, UNIDROIT proposed to draft a Convention, on the latter, it was intended to prepare a legal guide in particular for master franchise agreements which was expected to be completed by the end of 1997. The Observer further pointed out that while these topics, together with the programme of legal co-operation were key items on the UNIDROIT's work programme for the triennial period 1996-98, another item proposed for priority was the setting up of a databank on uniform law.

The Observer stated that the UNIDROIT had convened a meeting of international organizations in Rome last month to discuss its proposed databank, its size and objectives as well as the extent of co-operation which could be had from them. Since the AALCC was unfortunately not able to attend that meeting, her presence at the session might enable her to pursue the matter forward.

The *Delegate of the People's Republic of China* stated that since UNCITRAL and UNIDROIT made significant contributions to the unification of trade law, China had been actively participating in the work of these organizations. He informed the plenary that China's first Foreign Trade Law entered into force on 1 July 1994 and related rules and regulations were issued for enforcement soon thereafter. China would continue efforts to set up a complete framework of foreign trade law as soon as possible.

The *Delegate of Pakistan* enquired about the possible distinction between the UNIDROIT's Uniform Law on International Sales (ULIS) and the Vienna Convention on International Contracts for the Sale of goods, 1980.

The UNIDROIT Observer clarified that while the Vienna Convention had largely supplanted the ULIS Conventions, those Conventions were still in force amongst some European States.

The Plenary then proceeded to take up the item "WTO as a Framework Agreement and Code of Conduct for the World Trade".

The *Deputy Secretary-General* Ambassador Wafik Zaher Kamil introducing the Secretariat study on this item observed that post-World War II international economic relations were regulated by the World Bank, IMF and the GATT. GATT, however, suffered from a number of imperfections. These imperfections had now been removed in the Agreement establishing the WTO, a successor to GATT.

The Secretariat study on WTO, he said, described the organizational structure and the role and functions of the WTO; attempted to bring out the salient features of the various agreements set forth in the four annexes to the WTO Agreement, namely the GATT 1994, along with the sectoral agreements; the General Agreement on Trade in Services; the TRIPS Agreement; the Dispute Settlement Machinery; the Trade Policy Review Mechanism, and the Plurilateral Trade Agreements. In attempting a brief analysis of these agreements, the focus of the study was on pinpointing the extent and level of obligations that devolve on Member States of the WTO including the developing countries, and the flexibility provided to the latter. Lastly, the study described the overall impact of the WTO membership on the developing countries.

The Deputy Secretary-General stated that since the WTO Agreement imposed a general obligation on each of its Member States to ensure the conformity of its laws, regulations and administrative procedures with the various obligations provided in the various agreements, developing countries were required to bring their domestic legislation into line with the aforesaid general obligation before the expiry of the relevant transitional periods stipulated in the agreements. He submitted for consideration whether the AALCC as a major forum for Afro-Asian co-operation should assume the role of rendering assistance to its Member Governments in enacting or revising their legislation so as to meet their obligations under the WTO system.

The *Delegate of Pakistan* stated that the issues raised in the Secretariat were extremely important and complex and there was not enough time left to give in-depth consideration to such issues. He recalled that such matters were earlier used to be discussed in the Trade Law Sub-Committee which was the right forum. He suggested that the Secretariat should concentrate on some select issues arising from the WTO and prepare studies for discussion either by a group of experts or in the Trade Law Sub-Committee.

The *Delegate of Singapore* endorsing the views of the Pakistan delegate pointed out that Singapore would be hosting the Ministerial Conference of the WTO towards the end of this year which would discuss *inter alia*

the linkage between Trade and Environment. He hoped all the Member States of the AALCC who are WTO Members would attend that meeting and suggested to the Secretariat to prepare a study on Trade and Environment for that purpose.

The *Delegate of the People's Republic of China* stated that the establishment of WTO signified a new stage for the world multilateral trading system. His government maintained that developing countries should have more and equal opportunities to participate in the new trade system, and the principle of special and more favourable treatment should be fully reflected to enhance the interests of the developing countries, particularly the least-developed countries.

He pointed out that his Government had always held that participation in WTO and its integration with the world economy would be in conformity with China's basic State policy of reform and opening up to the outside world and the goal of establishing a socialist market economic system. However, China would only accede to this multilateral trade system with its status as a developing country. His country will in no way sacrifice its fundamental interests in order to accede to the WTO. China was the largest developing country in the world. Without China's participation, WTO would be incomplete. China needed WTO and WTO also needed China. Therefore, China's early accession to WTO would be beneficial not only to China but also to the world at large.

**(ii) Decisions of the Thirty-Fifth Session (1996)**  
**Agenda item : International Trade Law**

(Adopted on 8.3.96)

**A. Agenda item "Legislative Activities of the United Nations and other International Organizations Concerned with International Trade Law"**

*The Asian-African Legal Consultative Committee at its Thirty-Fifth Session*

*Having taken note* of the Report concerning the Legislative Activities of the United Nations and other International Organizations concerned with International Trade Law contained in Doc. No. AALCC/XXXV/Manila/96/9;

*Having heard* the statement of the Observer for UNIDROIT and views of member delegations;

1. *Expresses* its appreciation for the brief of documents prepared by the Secretariat on the recent developments in the field of International Trade Law;
2. *Also expresses* its appreciation for the continued co-operation with the various international organizations competent in the field of international trade law and hopes that this cooperation will be intensified in the future; and
3. *Requests* the Secretary-General to continue to monitor the developments in the area of international trade law and present a report thereon to its Thirty-sixth session.

## B. Resolution on "WTO as a Framework Agreement and Code of Conduct for the World Trade"

*The Asian-African Legal Consultative Committee at its Thirty-Fifth Session*

*Having taken note* of the Secretariat study on "WTO as a Framework Agreement and Code of Conduct for the World Trade" contained in Doc No. AALCC/XXXV/Manila/96/8;

*Having heard* the comprehensive statement of the Deputy Secretary-General;

*Realizing* the importance and complexity of the issues raised in the Secretariat study for the Member States for which adequate time was not available at the present session;

1. *Requests* the Secretary-General to consider convening an *ad hoc* working group of experts meeting to examine the issues raised by the Secretariat study and to report the outcome thereof to the next session;
2. *Directs* the Secretariat to continue to monitor the developments related to the code of conduct for the world trade; and
3. *Decides* to place the item on the agenda of its Thirty-sixth Session.

## (iii) Secretariat Brief

### A. Report on Legislative Activities of United Nations and Other Organizations Concerned with International Trade Law

#### I. United Nations Commission on International Trade Law (UNCITRAL)

The twenty-eighth session of the United Nations Commission on International Trade Law (UNCITRAL) was held in Vienna from 2 to 26 May 1995. The substantive topics before this session were: (i) Draft Convention on Independent Guarantees and Stand-by Letters of Credit; (ii) Draft UNCITRAL Model Law on Electronic Data Interchange and Related Means of Communication; (iii) Draft Notes on Organizing Arbitral Proceedings; (iv) Assignment of Receivables; (v) Cross-border Insolvency; and (vi) Built-Operate-Transfer (BOT) Projects.

At this session, the Commission finalized and formally adopted the text of a Draft Convention on Independent Guarantees and Stand-by Letters of Credit and transmitted it to the fiftieth session of the UN General Assembly along with a request to establish a UN Convention on Independent Guarantees and Stand-by Letters of Credit on the basis of the Draft Convention by means of a resolution. The Commission began reviewing the text of a draft Model Law on Legal Aspects of EDI and Related Means of Communication and was able to adopt draft Articles 1 and 3 to 11 of the draft Model Law. The Commission also carried out a review of the Draft Notes on Organizing Arbitral Proceedings and requested the secretariat to revise the Draft Notes in the light of the comments and suggestions made during the session and to submit the revised text at its next session for final approval. On the new topics of Assignment of Receivables, Cross-

border Insolvency and BOT Projects, the Commission identified the precise scope of the future work to be undertaken. The relevant details about the progress made on these topics are set out hereunder:

## (I) DRAFT CONVENTION ON INDEPENDENT GUARANTEES AND STAND-BY LETTERS OF CREDIT

### *Background*

The letters of credit were originally intended to be used in connection with the documentary sale of goods, but they are now being used for a number of other purposes, such as the works contracts, provision of services, or any other transaction where the act of performance for which payment is due may be established by documents such as a certificate of acceptance or completion or any other certificate, preferably by an independent party. These are commonly known as stand-by letters of credit.

While the traditional letter of credit provides the seller with a secure mechanism for payment by the buyer, the stand-by letter of credit is a default instrument in that it covers the risk of non-performance or defective performance by a contractor, supplier or other obligor. Guarantees issued by banks or other financial institutions serve the same function as stand-by letters of credit, but their distinguishing feature is the independence of the guarantor's undertaking from the underlying relationship between the principal and beneficiary.

Stand-by letters of credit and guarantees, whilst functionally similar, differ as to their legal treatment for the prime reason that the stand-by letter of credit is, after all, a letter of credit, and therefore, laws and regulations governing letters of credit would generally be applicable to stand-by letters of credit which might not be appropriate for the latter in view of its different purpose. As for guarantees, the legal framework is distinct from that governing stand-by letters of credit as it is characterized by a varied development of national laws, in particular case law, towards recognizing the independent legal nature of the guarantee. Thus, there exists considerable disparity and uncertainty in respect of the legal rules governing the two kinds of instruments. It has, therefore, been considered desirable to impart a greater degree of certainty and uniformity in this area.

The Commission, at its twenty-first session (1988) considered the report of the U.N. Secretary-General on this topic.<sup>1</sup> It agreed with the conclusion of that report that a greater degree of certainty and uniformity was desirable and approved a suggestion made in that report that future work be envisioned

1. Doc. No. A/CN.9/301.

in two stages, the first relating to contractual rules or model terms and the second pertaining to statutory law.

With regard to the first stage, the Commission welcomed the initiative taken by the International Chamber of Commerce (ICC) in preparing Uniform Rules on Guarantees and felt that comments and possible recommendations by the Commission could help to enhance the worldwide acceptability of such rules. The twelfth session of the Working Group on International Contract Practices held in Vienna (November-December 1988) was devoted to that purpose. That Working Group also recommended that work be initiated in the Commission on the preparation of a uniform law on independent guarantees and stand-by letters of credit, whether in the form of a model law or of a convention. That recommendation was accepted by the Commission at its twenty-second session (1989).<sup>2</sup> The Working Group devoted its thirteenth to twenty-third sessions (1990-95) to the preparation of a uniform law.<sup>3</sup> The work was carried out on the basis of the working papers prepared by the secretariat on the possible issues to be included in the uniform law.<sup>4</sup> The draft articles of the uniform law, which the Working Group decided should as a working assumption be in the form of a draft Convention, were submitted by the secretariat.<sup>5</sup> The Working Group also had before it a proposal by the U.S.A. relating to rules for stand-by letters of credit. The text of the draft Convention as presented to the Commission by the Working Group was contained in the annex to document No. A/CN.9/408. After examining the Draft Convention submitted by the Working Group and incorporating amendments therein, the Commission formally adopted the Draft Convention. It then transmitted the text to the General Assembly along with a request to establish an International Convention on Independent Guarantees and Stand-by Letters of Credit by means of a resolution and open it for signature. The General Assembly at its fiftieth Session has adopted and opened for signature or accession the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit.

### *An Overview of the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit*

The *United Nations Convention on Independent Guarantees and Stand-by Letters of Credit* consists of 29 articles arranged under seven chapters. Chapter I on *Scope of the Application* has Articles 1 to 4; Chapter

2. Official Records of the General Assembly, Forty-third Session, Supplement No. 17 (A/43/17), para 8.

3. The reports of these sessions are contained in Doc. 9/330, 342, 345, 358, 361, 372, 374, 388, 391, 405 and 408.

4. Doc. Nos. A/CN.9/WG.II/WP.63, WP.70 and WP.71.

5. Doc. No. A/CN.9/WG.II/WP.67, WP.73 and Add. 1, WP.76 and Add. 1, WP.80 and WP.83.