

**SUMMARY RECORD OF THE SIXTH GENERAL MEETING HELD ON FRIDAY, 19 JULY 2002,
AT 10.00 A.M.**

H. E. Al-Musa Elayo, Minister of State for Justice, Federal Republic of Nigeria (on behalf of the President) in the Chair

1. The **President** invited the Secretary-General to introduce the item “**International Legal Instrument Against Corruption**”.

2. **Amb. Dr. Wafik Z. Kamil, Secretary-General** drew attention to the document AALCO/XLI/Abuja/2002/S.11, which the Secretariat had prepared in anticipation of the inclusion of this item on the agenda of 41st Session. He expressed his gratitude to the Member States for supporting his initiatives on this important item. He said that his participation at the Global Forum II on “Fighting Corruption and Safeguarding Integrity” held in May 2001 and consultations with AALCO Member States delegations attending that Forum inspired him to propose active involvement of AALCO in the matters concerning combating corruption, which he believed was of great concern to AALCO Member States.

He recalled that the move to develop an international legal instrument was initiated with the adoption by the General Assembly resolution 55/61 at its 55th Session which among others provided for the establishment of an Ad Hoc Committee to carry out the negotiations for the conclusion of such a convention under the United Nations auspices. The terms of reference for the commencement of the negotiations of the legal instrument were drawn up at the Inter-governmental meeting held in Vienna from 30 July to 3 August 2001, under the auspices of the United Nations Commission on Crime Prevention and Criminal Justice. It was followed by an Informal Preparatory Meeting of the Ad Hoc Committee held in Buenos Aires in December 2001 which received a number of proposals from various delegations. He pointed out that many of these proposals were put forward by AALCO Member States.

Following the decision taken at the 56th Session of the General Assembly, the Ad Hoc Committee met twice, first, from 21 January to 1 February 2002 and subsequently from 17 to 28 June 2002. He noted that the Ad Hoc Committee has completed the first reading of the draft Convention and that the third session of the Ad Hoc Committee scheduled to be held in Vienna from 30 September to 11 October 2002 would begin the second reading of the draft convention. He stressed that as the Ad Hoc Committee was expected to complete its work in 2003 it was a matter of urgent priority for the AALCO Member States to give focused consideration to the issues under consideration. He said that the Secretariat would prepare a study on the provisions of the draft Convention for consideration at the 42nd Session of AALCO.

3. The **Delegate of Islamic Republic of Iran** considered that following the adoption of the Convention against Transnational Organized Crime and its three Protocols by the UN General Assembly, time had come for the international community to take serious and collective action against the crime of corruption. Many countries had already adopted and implemented certain measures to combat this insidious phenomenon at national level, but the transnational nature of this crime and the grave challenges it poses to the stability and prosperity of all human societies, urged the international community to design a legal framework to deal with this issue in a comprehensive and collective manner. Therefore, the mandate given by the UN General Assembly to the Ad Hoc Committee to draft and finalize a convention against corruption was of high significance.

He said that the proposal of the AALCO Secretary-General to include this item in the agenda of the 41st session of the Organization was a timely and useful initiative which could provide a window of opportunity for the Member States to be informed of the matters of common concern, and if possible, to harmonize their positions on the different parts of the draft convention which were under consideration in the Ad Hoc Committee.

He believed that corruption hampers political stability, undermines economic and social foundations, unravels cultural and moral values, and adversely affects the rule of law and rendering of public services such as education and health. It was indeed a global phenomenon that exists and occurs in both developed and developing countries alike, thus requiring a global response and strategy. In his view, such a response was only possible if a comprehensive, functional and effective international instrument was designed to strengthen the ability of countries to fight corruption at all levels. Hence, the Ad Hoc Committee was entrusted with a heavy responsibility to draft a comprehensive document that would deal with corruption effectively, both in public and private sectors.

The future convention, in his view, should contain certain compelling features which he summarized as follows:

1. The convention must include a broad definition of corruption encompassing all forms of this crime with a view to criminalizing them and taking effective measures for their prevention and punishment. In addition, it should have a broadest possible definition of a public official whether elected or nominated.
2. The convention should also focus on the preventive measures. In fact, prevention was a fundamental element in fighting corruption, taking into account that penal action, by itself, could not solve all the problems posed by the scourge of corruption.
3. The convention must provide an international binding legal framework for detention, investigation, criminalization, prosecution, while taking into consideration the differences in legal systems and bridging them.
4. In order to criminalize corruption in all its forms, the major vehicle assisting the transfer of funds of illicit origin should be specifically targeted. In this respect, each country should take necessary measures to ensure that all illegal funds would be repatriated to the countries of origin and rightful owners.
5. Similar to the provisions on international cooperation contained in the UN Convention against Transnational Organized Crime, the convention against corruption should provide for a range of measures regarding administrative and mutual legal assistance among state parties for any investigation, prosecution and judicial proceeding in cases involving corruption.
6. The convention must also entail regulations against the application of bank secrecy or privacy provisions which indeed impede or hinder criminal investigation or other legal proceedings relating to corruption, money-laundering or related illicit practices.
7. The Convention should additionally provide for technical and operational assistance to developing countries with a view to strengthening their institutional capacity to enforce anti-corruption measures as well as investigating and prosecuting the offences specified in the convention.
8. In drafting the provisions of the convention, which was primarily aimed at fostering international cooperation, care must be taken that the integrity of domestic legal systems were not compromised. In this context, the scope of application of the convention must be responsive to the concerns of all states, particularly on the sensitive issue of sovereign equality, territorial integrity and non-interference in the domestic affairs of the state parties.

He urged AALCO Member States to establish a common ground for further and better co-operation in the course of the negotiating process in the Ad Hoc Committee and join forces against a common enemy. He felt that the developed countries were better endowed and equipped to address certain aspects of international corruption. However, the developing countries, would also have to play their role on other fronts.

4. The **Delegate of the Republic of Korea** believed that international efforts to establish an effective legal instrument against corruption represented an important element of the broad agenda for promoting a better world. Until recently the treatment of corruption was confined to the national level. However, the international community had come to realize that sustainable social and economic development and, in many cases, domestic and regional peace and security depended on good governance and the rule of law, which in turn required a corruption-free public administration.

In his view, the efforts of the OECD and the UN, especially the work of the Ad Hoc Committee for the Negotiation of a Convention against Corruption had taken these efforts against corruption to a higher, global level. The establishment of the Ad Hoc Committee and the discussions within it show the commitment of the international community to fight all aspects of corruption by all means possible, including prevention, criminalization, international cooperation and the return of funds of illicit origin. His delegation believed that the work of the Ad Hoc Committee would greatly contribute to the international efforts to combat corruption and hoped that it would be able to complete the negotiation process by the end of 2003, the deadline set by the General Assembly.

Speaking about the steps taken by his Government to combat corruption, he said that Korea has ratified the OECD Anti-Bribery Convention, and has enacted domestic laws concerning corruption such as the Act on Prevention of the Bribery of Foreign Public Officials in International Business Transactions (1998) and the Act on the Prevention of Corruption (2001), which established an Independent Commission against Corruption. The Commission receives reports and notifications and is authorized to put high-level officials suspected of corruption to indictment and to make recommendations to Government agencies and overseas.

He said that the fight against corruption was painstaking and a long-term process, including a long-term institutional commitment by Governments, civil society as well as the mass media and the academic community.

He said that the Global Forum on Fighting Corruption and Safeguarding Integrity (Global Forum III) and the IXth International Anti-Corruption Conference (IACC) would be held in Seoul, Korea in May 2003. The Global Forum is a meeting of Ministers responsible for fighting corruption, whereas the IACC is a conference of anti-corruption professionals and is supported by Transparency International, an international NGO. However, they share the same objective of building societies free of corruption. He believed that holding these two meetings together at the same venue would let them interact more actively and bring more meaningful rewards. He hoped that all members of the AALCO would be able to participate in these two important events next year.

5. The **Delegate of Thailand** was of the view that Corruption was a problem that affects all countries especially developing countries. It can have different connotations for different countries with different legal systems, and adversely effect on economic and social development and well-being of those affected countries. Thailand, therefore, fully supported the current negotiations to develop an international legal instrument against corruption as a necessary step for the international community to take. With regard to the draft Convention, he believed that the best form of eliminating corruption was through prevention. Therefore, the draft Convention should attempt to strike a balance between preventive and law enforcement measures. He welcomed the idea to use the United Nations Convention against Transnational Organized Crime as a basis for further discussion, where appropriate, especially in the area of international cooperation. He urged member countries of AALCO to be consistently represented in and contribute to the work of the Ad Hoc Committee meetings in order to ensure that views, experiences, legal norms and practices of the countries in these regions were heard and duly incorporated in the convention, as well as with a view to ensuring and achieving a truly universal character of this convention.

He also welcomed the timely initiative of the Republic of Korea in hosting the Global Forum on Fighting Corruption and Safeguarding Integrity (Global Forum III) and the 11th International Anti-Corruption Conference (IACC) which would be held in Seoul in May 2003. He hoped that these meetings would significantly and positively contribute to the early conclusion of the convention in this regard.

6. The **Delegate of People's Republic of China** thanked the Secretary-General for his excellent introduction of the agenda item. He was of the view that with the development of economic globalization, crime of corruption gradually tended to be transnational. He recognized the common efforts of the international community to enhance international co-operation in combating the crime of corruption as well as the regional instruments developed for this purpose. He welcomed the elaboration of an international legal instrument against corruption pursuant to resolution 55/61 of the General Assembly of

the United Nations. While emphasizing that corruption was a common issue faced by the international community, he was of the view that due to diverse economic and social systems of States, each State should take preventive measures tailored to suit its special situation in accordance with its laws. He suggested that since the United Nations Convention against Transnational Organized Crime set up effective domestic preventive regime and has won general support of the international community, the proposed draft convention against corruption should take into account the experiences gained in respect of that convention.

Further, he said that the crime of corruption was inseparable from economic interest. Many a times, the criminals escape to foreign countries with huge amount of corruption asset. Therefore, the new legal instrument should provide for investigation and return of proceeds of crimes of corruption as one of the most important issues for consideration. He stressed that the claim of return of the proceeds of crimes was an inalienable right of the legal owners and of the country from which the proceeds flow out. He assured of his country's support to all measures both domestically and internationally to combat corruption.

7. The **Delegate of Indonesia** expressed his appreciation to the Secretariat for the preparation of the preliminary study which set out the current status of issues pertaining to the topic of corruption. He observed that corruption has spread widely like in many other parts of the world, in the Asian and African regions as well. He emphasized on increasing co-operation and assistance among the AALCO Member States to deal with this problem.

Speaking about his country's efforts, he said that although Indonesia was facing many challenges, it has already embarked upon a national strategy to deal with corruption. As a follow-up of the adoption of the International Code of Conduct for Public Officials and the United Nations Declaration Against Corruption and Bribery in International Transactions, Indonesia has issued Law No. 28/1999 concerning Good Governance and Free from Corruption collusion and Nepotism, Law No. 31/1999, Law No. 20/2001 on Combating Corruption and Law No. 15/2002 Concerning Money Laundering. In addition, an Investigation Committee on Public Officials Wealth has been established which obliged the Public Officials to report their wealth and its sources. He said that while cases of corruption were seriously dealt with according to the laws many corrupts have left Indonesia and were hiding in foreign countries. It was unable to bring them back as there are either limited or no bilateral arrangements on extradition with those countries. While reiterating his country's active contribution towards the conclusion of the United Nations Convention Against Corruption, he urged AALCO Member States to promote co-operation in combating corruption through bilateral as well as multilateral arrangements.

8. The **Delegate of Nigeria** recognized that corruption in all its ramifications, within States and beyond national boundaries, has had and is still having profound implications on human rights, democracy and the rule of law. He expressed his concern over the fact that much of the wealth was illegally slashed away in foreign banks by corrupt individuals in collaboration with unscrupulous foreigners. He felt it disconcerting that in the name of the rule of law, legitimate return of such looted funds to countries of origin has been mired in unnecessary controversy and legal technicalities. He called the international community to translate this revulsion to such misconduct to positive action. This would serve as a deterrent to potential looters, and complement national efforts on the eradication of corruption. As a way forward his delegation therefore, welcomed the efforts of the AU to draft an international Convention on Corruption aimed at the eradication of corruption in Member States of the Union. He urged AALCO to make similar pronouncement itself on the matter as it deliberates on this item.

He said that at the national level, the present Administration in Nigeria had initiated policies and established institutions to tackle the problem of corruption. The "Corrupt Practices and Other Related Offences Act, 2001" passed last year, was now in operation. A National Commission, headed by a respected retired judge of the Court of Appeal, is empowered to investigate and prosecute all individuals, whether in or out of government, for contravention of the provisions of the law. It was interesting to note that even President of Nigeria was not immune from the provisions of this law, widely considered as the most sweeping piece of legislation in his country's post independence history. This was a testimony of Nigeria's commitment to confront this evil, which corrodes its socio-economic fabric. He mentioned that

the ECOWAS sub-region of which Nigeria is a member was poised to foster lasting co-operation in the area of combating corruption within the sub-region. He commended similar effort to all members of AALCO.

9. The **Delegate of Tanzania** associated himself with the views expressed by other delegations. He commended the Secretary-General for his active participation in the regional and international efforts to develop a common global binding instrument to combat corruption and urged the Secretariat to continue with these efforts. He drew attention to the forthcoming meetings convened under the auspices of the African Union (AU) to negotiate a draft AU Convention on combating corruption namely the Meeting of senior experts scheduled for 16th and 17th September 2002 and the Ministerial level Meeting on 18th and 19th September 2002. He urged the African Member States to prepare sufficiently and participate in those meetings actively. He felt that it would be useful for AALCO to monitor AU's work and enrich its study on this topic.

Speaking about Tanzania's strides against the scourge of corruption, he said that internally corruption needed to be looked and fought at two levels:

- (a) through systematic reforms geared towards addressing underlying weakness in policy, administration and politics, and create a strong economic base conducive to elimination of corruption;
- (b) Formulate a specific and focused national anti-corruption strategy upon which the war against corruption would be based;

In his view, any effort, principles, formulation of guidelines or international instruments must be home-grown. Each individual country must undertake home-grown measures. International co-operation should complement internal measures and collaboration within the region. Such co-operation should focus on assistance in obtaining evidence, documents and records, investigations, forfeiture and confiscation of property in respect of proceeds of corruption and enforcement of forfeiture orders, search and seizures, freezing of assets or interdicting of dealings in properties suspected to have been corruptly acquired. Further, such international co-operation was also essential in detection of corruption in international business transactions, public procurement and trade, especially in international arms trade, which was a source of grand corruption because of secrecy on the pretense of national security.

10. The **Delegate of India** believed that corruption was at the root of lack of development. In India, great deal of attention has been given to the issue of corruption and many steps have been taken to combat this malaise. It has very strong administrative, legal and judicial framework in place. An independent constitutional authority designated as the Central Vigilance Commissioner to investigate cases of corruption in high places has been established. The press and public opinion also remain vigilant against corrupt practices and often expose instances of corruption. More recently a comprehensive bill against money laundering has been enacted. A very elaborate code of conduct for the public servants setting out definitions of public servant and corruption has been in force. However, despite such strong system in place it has been a very difficult process to contain and combat corruption. While on the domestic front, some progress could be made in investigating cases of corruption, efforts to pursue international leads were endlessly thwarted. The secrecy clauses in banking transactions were the main hindrance during investigation of some of the prominent cases. The delegate therefore, stressed that the proposed International Convention on Corruption to address the following issues, among others:

Firstly, the proposed convention should focus on international cooperation, particularly judicial co-operation in the investigation of cases involving corruption and should develop ways and means to tackle the transnational aspects of corruption. Secondly, its should define corruption in a comprehensive manner and its scope of application should also be equally broad. It should not only cover the corrupt activities in government and public sector but also all those private sector activities which impinge on the public interest.

The proposed Convention must follow the dictum of “crime does not pay” and should clearly spell out the methodology of tracing the funds originating from corruption and repatriation of such funds to the countries of origin.

Further, transparency in the transactions of people in power would go a long way in reducing corruption. The proof of guilt should not be a precondition for according the necessary facilities for investigation of bank accounts and other documents.

11. The **Delegate of Uganda** while appreciating that legislation on corruption on the international scene was long overdue, she wished to raise some concerns which were as follows:

- (i) Definition: corruption can have different definitions for different States depending on the levels. Should it be a concept, a context or simply a corporate terminology should it focus on just civil servants or private sector as well?
- (ii) Does it not depend on the size of investments? What about the requirement for secrecy? Some issues of corruption are tied to political inclination wholly depending on the suspect's relationships with the government of the day.

She said that in Uganda there is a Minister of State in charge of combating corruption and Integrity and the Inspector General whose role is to investigate and prosecute the corrupt in Government. This year the Government amended the law on corruption to make it more stringent. There is an independent Auditor General who reports to parliament. All Government system have been overhauled. Alongside all these strategies the Ugandan Government would sensitize the masses about this evil as very important

12. Comments received from the Government of **Malaysia**.

- 1. Malaysia supports the conclusion of a comprehensive and internationally legally binding instrument against corruption encompassing all the aspects currently proposed in the draft Convention.
- 2. Malaysia is playing an active role in the deliberations of the Ad Hoc Committee on the draft Convention.
- 3. In relation the AALCO Secretariat's proposal that this item be placed on the agenda of the AALCO's 41st Session and that the Secretariat should follow the negotiations at the Ad Hoc Committee and prepare a further study on the proposed Convention, it is proposed that, depending on the views expressed by other AALCO Member States, Malaysia may consider supporting it.
- 4. Malaysia supports the conclusion of a comprehensive and internationally legally binding instrument against corruption encompassing all the aspects currently proposed in the draft Convention.
- 5. Malaysia is playing an active role in the deliberations of the Ad Hoc Committee on the draft Convention.
- 6. In relation the AALCO Secretariat's proposal that this item be placed on the agenda of the AALCO's 41st Session and that the Secretariat should follow the negotiations at the Ad Hoc Committee and prepare a further study on the proposed Convention, it is proposed that depending on the views expressed by other AALCO Member States, Malaysia may consider supporting it.

13. The Meeting then took up for consideration the agenda item **WTO as a Framework Agreement and Code of conduct for World Trade**.

14. **Dr. Li Zhenhua, Assistant Secretary-General of AALCO** introduced the Secretariat document on this topic AALCO/XLI/ABUJA/2002/S.14.

Dr. Li said that the year 2001 has been a successful one for the WTO. In contrast with the setback at Seattle, WTO Members were able to agree upon a work programme during the Fourth Ministerial Conference held at Doha, Qatar in November 2001.

The Doha Ministerial Declaration, in effect, sets the stage for the launch of a new round of negotiations. The new round will involve negotiations over a wide range of issues like: agriculture, services, implementation – concerns, intellectual property rights, environment and clarification of WTO rules etc. Added to these are the four Singapore Ministerial issues: investments, competition policy, government procurement, and trade facilitation.

The negotiations for the new round shall be concluded not later than 1 January 2005, which is within a period of three years from now. The Fifth Ministerial Conference of the WTO would take stock of the progress in these negotiations and provide any necessary guidelines. When the results of the negotiations in all areas have been established, a Special Session of the Ministerial Conference will be held to take decisions regarding the adoption and implementation of those results. The Ministerial Declaration stipulates that the outcome of the negotiations shall be treated as parts of a single undertaking.

The overall conduct of the negotiations shall be supervised by a Trade Negotiation Committee under the authority of the WTO's General Council. The first meeting of the Trade Negotiating Committee, which is chaired by the Director General of WTO in ex-officio, Dr. Li informed, met on 1 February 2002 and outlined the guidelines and procedures for the negotiations.

He said that the AALCO Secretariat would continue to monitor the developments in this regard. Apart from this, if the AALCO Member States wish to engage in informal exchange of views on any of the subjects under negotiations, the AALCO could serve as the institutional framework for such consultations, by organizing workshops or seminars on the chosen topic.

In this connection, he recalled that at the 40th session (2001), the Organization had mandated the Secretariat to “examine and identify, in the light of its ongoing work related to WTO, relevant legal issues that could appropriately be considered within the framework of AALCO's work programme”.

In accordance with the above mandate, the Secretariat has offered certain suggestions in this regard. These include the proposed work-programme that provides for examining certain aspects of the WTO dispute settlement process; relationship between trade and environment and issues relating to the relevance of a multilateral framework for investments within the WTO framework. Dr. Li said that the feedback from the Member States would help the Secretariat formulate its work programme on the topic.

15. The **Delegate of the Republic of Korea** expressed appreciation for the Secretariat's succinct report on the developments in WTO. The delegate welcomed the decision of the Fourth Ministerial Conference to launch the Doha Development Agenda and hoped that the negotiations would help strengthen the multilateral trade system and forum, the basis for the continued growth of the global economy. Expressing full support for the ongoing negotiations, the delegate said that given the numerous issues on the agenda there is not much time before the 2004 deadline. Noting with satisfaction the launch of negotiations within the Trade Negotiations Committee (TNC), the delegate hoped that WTO Members will jointly endeavour to conclude the negotiations on time. He complimented the countries who had become new members to the WTO

16. The **Delegate of Kenya** commended the Secretariat for the excellent work undertaken to examine and identify relevant legal issues that could appropriately be considered within the framework of AALCO's work programme.

While partly agreeing with the Secretariat's view that WTO topics such as agriculture, textiles, goods, services, intellectual property, etc. are of a politico – economic policy orientation and as such do

not in themselves amount to legal issues, the delegate pointed out that the breach occasioned by non-compliance with the WTO agreements would invite legal issues to be addressed.

As regards the Doha decision to initiate a new round of negotiations, the delegate stressed that it was not the most favourable position from the perspective of Kenya and other developing/least-developed States. In order to have negotiations that would be fair, balanced, relevant and workable, focus should be had in development of technical capacity in the following areas:

- (a) Legislative, institutional and human resource empowerment to improve participation of developing countries at WTO programmes and ensure compliance with the WTO agreements.
- (b) Identification of new trading opportunities aimed at increasing the volume, value and export baskets of developing and least developing countries.
- (c) Harmonization of national laws to conform to WTO provisions.
- (d) Training of professional negotiating teams to ensure effective participation in negotiations.
- (e) Training experts and establishment of institutions capable of handling complex procedural requirements for application of WTO anti-dumping and subsidies and countervailing measures.

The Delegate was of the view that the AALCO Secretariat needs to be encouraged by Member States to closely monitor activities related to the development of capacity of the States to comply with the WTO agreements; and share with Member States, where possible progress on that front. To address the Secretariat's resource constraint, he said, voluntary contributions in this area should be encouraged.

The Delegate also expressed support for the proposed AALCO work programme to examine relevant legal elements relating to "relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements", and "relevance of a multilateral framework for investments, in the context of 'developmental' priorities of developing countries". The possibility of organizing regional workshops/seminars, on selective themes relating to the new round of negotiations to be launched, should be explored further.

17. The **Delegate of the People's Republic of China** spoke on WTO as the only global international organizations dealing with the rules of trade and relevant issues among nations. At the same time he said that the WTO Agreements are not fair or justified towards developing countries in some aspects. Particularly he cited the lop-sided nature of GATS, TRIPS and TRIMS. Therefore, it was his delegation's view that the WTO Agreements need further modification to ensure the balance of interests of both developing countries and developed countries. In the future negotiations, China will try its best to work together with other developing countries for a more fair and equitable multilateral trade system.

Speaking on China's entry into WTO the delegate informed that China has been the formal member of WTO since December, 2001. Joining the WTO will enable China to conduct international trade and economic cooperation under the multilateral, stable and unconditional MFN principle provided by WTO Members. Joining the WTO will further accelerate China's opening to the outside world. Joining the WTO will also accelerate the industrial reform and restructuring in China, forcing the advantageous industries to get even stronger and improving the quality and level of China's economic development.

The delegate said that while providing opportunities, accession to the WTO will also bring challenges to China because the overall economic development level of China is not very high, the reform of SOEs (state owned enterprises) are yet to be finished, the international competitiveness of some sectors is not strong enough. After entry into the WTO, China's economic administration system will have to adapt to the changes. Some industries and enterprises may suffer from certain negative impacts. However, China has the confidence to take the challenges from its accession to the WTO and achieve new progress of the national economy on a continuous basis.

China's accession to the WTO can promote not only the development of Chinese economy, but also that of the world economy. China has a huge market with big potential and wide prospect. With the

improvement of its economic strength, Chinese economy will be more closely linked to the world economy. Industrial and commercial communities of all countries in the world will gain more business opportunities.

The delegate informed that, in order to fulfill the commitments of China's accession to the WTO, the Ninth National People's Congress has passed the amendments to 7 national laws since August, 2000, including the amendments to the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises, the Trademark Law, the Patent Law and so on. The State Council has newly formulated 6 administrative regulations and amended 17 administrative regulations. Moreover, it has publicly annulled 221 sets of administrative regulations. China will grasp the opportunity brought by its accession to the WTO and establish an unified and transparent system of foreign trade and economic laws. Furthermore, this is both the needs of fulfilling the commitments of China's accession to the WTO and the inevitable requirements of constructing legal system of socialist market economy.

18. The **Delegate of Tanzania**, at the outset expressed his appreciation to the Government of India for the position it took during the Doha Ministerial Conference and also other AALCO Member States for their common stand in support of India. He congratulated the People's Republic of China on its entry to the WTO.

While welcoming the establishment of the Global Trust Fund for assisting developing countries in capacity-building and technical assistance, he urged the AALCO Secretariat to continue monitoring the ongoing negotiations within WTO. He called for establishment of a data bank on WTO dispute Settlement Panel decisions.

The delegate drew attention to the different trends of development within the Member States in the area of patented inventions of medicinal innovations. These innovations are of great importance to other less developed jurisdictions within the region and elsewhere. Hence he urged developed countries to exercise flexibility in their legal regimes so as to allow the less developed countries and under privileged to benefit from such patents.

19. The **Delegate of India** noted that WTO, as a global trade body presents many opportunities for the Asian and African countries. While welcoming the confidence-building measures launched during the pre-Doha phase by the WTO's General Council, the delegate singled out for emphasis the implementation issues as embodied in the existing WTO Agreements.

The delegate noted that there are many areas of concern for developing countries. Foremost among them, the Uruguay Round Agreements have not resulted in greater market access for the exports of developing countries on account of the phenomenon of tariff escalation, and the use of non-tariff barriers, in respect of products of export interest to the developing countries. The Special and Differential (S&D) provisions are mostly in form and not in substance. These provisions should be made contractually binding and must be operationalized and made enforceable. They should not stay merely as "best endeavor clauses". The TRIPs Agreement should be interpreted and harmonized with the UN Convention on Biological Diversity so as to ensure appropriate returns to traditional communities located mostly in developing countries of Asia and Africa.

It was the view of the Indian delegate that the Doha Declaration on TRIPs and Public Health sets the right tone for the further negotiations. It is also a fact that the expertise on WTO in developing countries is slowly gearing up to meet the future challenges. The work programme of AALCO should complement this effort. Since the review of DSU is going on, it is a good idea to examine the problems relating to WTO Dispute Settlement Understanding, with special focus on the concerns of the developing countries. Within the WTO itself, no doubt, efforts are being made by certain developed countries to enhance and provide technical assistance in these matters. The delegate welcomed the recommendation made by the Secretariat for further examination of these problems through conduct of specialized seminars etc.

20. Comments received from the Government of **Malaysia**.

Doha Ministerial Meeting

1. Malaysia notes the assessment made by the AALCO Secretariat on the outcome of the Doha Ministerial Meeting and its implications for developing countries.
2. Malaysia is currently participating in the negotiations of the various Working Groups to work out the modalities on the various issues to be included in the next Ministerial Meeting.
3. Malaysia notes that although the Singapore issues – investment, competition policy, transparency in government procurement and trade facilitation have been deferred to the Fifth Ministerial Meeting, Malaysia and the other developing countries must be prepared for such eventual negotiations and therefore work towards coordinating their positions for a stronger stand from developing countries as a whole in order to influence the outcome.
4. Malaysia welcomes the exclusion of labour standards and other non-trade issues from the Ministerial Declaration and will continue to strive for this status quo.
5. In relation to the competition policy issue, Malaysia is proposing special carve outs to protect certain sectors of our industry. Chambers has advised the Working Group on Competition Policy that is being coordinated by the Ministry of Domestic Trade and Consumer Affairs that a study on how a legal framework on competition policy would be compatible with the WTO Agreement as a whole would be required. This is because there are already elements of competition policy in the existing agreements such as TRIPS.
6. In relation to the transparency on government procurement issue, the Ministry of Finance that is coordinating the Working Group has decided that it needs to revisit its previous stand on the modalities for this matter. This is because although Malaysia accepts in principle the need for transparency in this matter, Malaysia seeks further clarification on the extent of transparency required. In this respect, Malaysia is completely opposed to the criteria of awards being one of them and is also of the view that this matter should not be subject to the WTO dispute settlement process.
7. In relation to trade facilitation, Malaysia does not agree to have negotiations on this matter. This is because the issues are already being addressed in the other Committees to facilitate trade.
8. Although Malaysia welcomes the Declaration on the TRIPS Agreement and Public Health and the resolutions, in particular paragraphs 4 and 5, there is still concern over the feasibility and practicability of such compulsory licence where the local pharmaceutical industry is not equipped or does not possess the technical and technological know-how to manufacture the drugs concerned or where the local market for the drugs would not satisfy the economics of scale in relation to production costs. It is noted that this matter was referred to the TRIPS General Council but to date no resolution has been forthcoming.
9. Malaysia supports the emphasis of the Doha Ministerial Meeting on capacity building and technical assistance. Malaysia also notes the mandate by the WTO to set up a Global Trust Fund for the purpose of providing technical assistance to developing countries and Least Developed Countries.
10. Malaysia is currently pursuing a technical assistance programme with the Japan International Cooperation Agency (JICA) scheduled for October 2002.

DSU Review

11. Malaysia is studying the proposals for review that have been made by the other WTO Members and will make its own proposals if necessary.
12. Malaysia supports the proposal to have more panel and Appellate Body members and that they be constituted on a permanent basis instead of the present ad hoc basis.
13. Malaysia agrees that the sequencing issue between Art.21.5 and 22 of the DSU needs to be resolved as well as the various interpretative difficulties and lacunas in the DSU. Foremost is clarification on the powers of the panel and Appellate Body in relation to amicus curiae briefs, the powers of subsequent panels and Appellate Body's to depart from previous decisions of the Appellate Body (i.e. whether the Doctrine of Stare Decisis applies to DSB rulings and recommendations).

AALCO Work Programme

14. Malaysia supports the proposal by the Secretariat at paragraph 26 of its Report for the AALCO to undertake an examination of the following aspects of the WTO Dispute Settlement Process –

Interpretative clarifications emanating from disputes involving various WTO agreements e.g. agriculture, IPRs, anti-dumping, services, etc.,

Procedural and evidentiary aspects of the DSU; and

Survey of the operationalization of “special and differential treatment” for developing countries in the context of the WTO Dispute Settlement Process.

15. Malaysia supports the proposal by the Secretariat at paragraph 27 of its Report that the AALCO provide a forum for its Member States to coordinate their positions on issues relating to the new round of negotiations as agreed at the Doha Ministerial Conference.

16. As to the further proposal at paragraph 27 that the Secretariat's work programme also examine the relevant legal elements related to the “Relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements” and “relevance of a multilateral framework for investments, in the context of “developmental” priorities of developing countries, Malaysia agrees on the need for such a study and has no objection to either or both of the 2 methods proposed to carry out the study, that is –

For the Secretariat to undertake the new areas of study in co-operation with other international and inter-governmental bodies such as the WTO, UNCTAD and the Advisory Centre on WTO Law; or

For the Secretariat to organize regional workshops/seminars on selective themes related to the new round of negotiations to be launched.

General

17. It is also proposed that, depending on the views expressed by other AALCO Member States, Malaysia may consider supporting a further resolution that the Secretariat monitor the developments in these matters.

21. The meeting then took up for consideration the agenda item **Progress Report on Legislative Activities of UN and other Organizations concerned with International Trade Law.**

22. **Dr. Ahmed J. Al-Gaa'tri, Deputy Secretary-General, AALCO** introduced the Secretariat document on this topic.

On the work of UNCITRAL, Dr. Gaa'tri informed that during its 34th Session in June-July 2001, the Commission adopted the Convention on Assignment of Receivables in International Trade and also the Model Law on Electronic Signatures. Apart from this, the Commission also considered the possible future work to be undertaken in areas of: - transport law; security interests; privately financed infrastructure projects; and electronic commerce.

He also gave an overview of the work done by UNCTAD and the Hague Conference on Private International Law. As to the work of UNIDROIT (International Institute for the Unification of Private Law), he said that the 80th session of the UNIDROIT which met in Rome from 17-19 September 2001 adopted the Draft Convention on International Interests in Mobile Equipment.

23. The **Delegate of the Republic of Korea** spoke on the proposed expansion of the membership of UNCITRAL. Expressing satisfaction that UNCITRAL has decided to open its doors to more members in the near future, he hoped that the new seats will be distributed in a more equitable manner. Currently, only seven countries from Asia are participating as members of the Commission. The current composition of the UNCITRAL membership is hardly proportional in terms of its geographical representation. Given that the Asian region is the most populous in the world and that the volume of Asia-related international trade is biggest, it would be much easier to achieve wider implementation of UNCITRAL's work if more Asian countries are able to contribute as board members. This adjustment would also correspond to the principle of fair and equal treatment enshrined in the United Nations Charter. For this reason, it was the view of his delegation that while enlarging the membership of UNCITRAL, enhancing more equitable regional distribution for increased seats in the proportional manner, should be highlighted.

The Delegate also drew attention to the importance of the work carried out by the Hague Conference on Private International Law. He regretted that the membership of Asian-African States in this body was low and dismal. With a view to encouraging increased membership and active participation of AALCO Member States, the delegate requested the Secretary-General of AALCO to invite the officials of the Hague Conference to the next annual session of AALCO.

24. The **Delegate of Thailand** said that his country placed the development and modernization of international trade law issues as one of its priorities. Thailand not only closely followed, as a member, the work of the UNCITRAL, but also the work of the Hague Conference and UNIDROIT, as an observer.

Speaking on the recently concluded 35th session of UNCITRAL, he informed that it adopted the Model Law on International Commercial Conciliation, which is a part of the United Nations' attempts to develop a harmonized international trade law. Thailand, as a member of the UNCITRAL, has been actively involved in the drafting of this law. Thailand has always supported the use of conciliation as an alternative to arbitration in settling international business disputes, in view of its flexible and informal nature. The delegate said that the Thai conciliation regulation has been adopted in the light of the UNCITRAL Conciliation Rules of 1980, which is the basis of this Model Law.

Drawing attention to AALCO's role in the successful establishment of the regional arbitration centers in Cairo, Kuala Lumpur, Lagos and Tehran, he urged AALCO to continue its endeavour and also to take charge of being a viable forum for co-operation among Asian and African countries, in the fields of arbitration and conciliation.

Supporting strongly the proposal to expand the membership of UNCITRAL, he emphasized that it should be done on a fair and equitable basis. Although UNCITRAL is a forum where the decision-making is based on consensus and all participants, members and observers, alike, may express their views and opinions without restriction, the delegate was of the opinion that attaining a membership status would help national legislatures in developing countries to justify the allocation of their scarce national resources for participating in UNCITRAL and its working group meetings.

The Delegate urged the United Nations to allocate more funds and resources for the development of international trade law, and more particularly for technical assistance to developing countries in drafting national legislation or model laws on trade issues. It was the belief of his delegation that the success of UNCITRAL cannot be achieved without widespread adoption of UNCITRAL legal texts into national laws. Therefore, he emphasized closer linkages and more initiatives to enhance technical co-operation between UNCITRAL and other international organizations and the AALCO's Centre for Research and Training.

25. The **Delegate of India** spoke on the work of UNCITRAL at its 34th and 35th Sessions.

The 34th Session of the Commission adopted the draft Convention on the Assignment of Receivables in International Trade. The adoption of uniform rules governing the assignment of

receivables, the delegate said, would create certainty and transparency in the legal regime and promote the availability of capital and credit at more affordable rates and thus facilitate the development of international trade.

At the 34th Session, the Commission also adopted the UNCITRAL Model Law on Electronic Signatures and the Guide to Enactment. The delegate highlighted its significance in view of increasing reliance on electronic means of communication and storage and transmission of data and information, and termed it as a useful supplement to the Model Law on Electronic Commerce adopted in 1996.

The delegate informed that India has recently adopted the Information Technology Act (Act 21 of 2000) based on the Model Law on Electronic Commerce. The Act provides for legal recognition of electronic records and digital signatures, and will facilitate e-commerce by enabling the conclusion of contracts and the creation of rights and obligations through the electronic medium. The Act provides for a regulatory regime to supervise the Certifying Authorities issuing Digital Signature Certificates and contains provisions to prevent their possible misuse.

As regards the work of UNCITRAL at its 35th Session (2002) the delegate informed that the Commission had adopted the Model Law on International Commercial Conciliation together with the Draft Guide to Enactment and Use. The application of the draft model law extends to international conciliation but States are free to apply it to domestic conciliation by introducing appropriate changes in the model law. The model law defines the key areas like commencement of conciliation proceedings which will be essential in jurisdictions which seek to adopt provisions relating to suspension of the limitation period for the time the conciliation proceedings are in progress. The model law also outlines the procedure for appointment of conciliators and conduct of conciliation; the issues of disclosure, confidentiality, arbitrator acting as conciliator and admissibility of evidence in other proceedings. The model law provides that the settlement agreements are binding and enforceable but does not lay down any specific procedure for enforcement of settlement agreements as the practice in this area in the various legal systems is different. Therefore, the issue of mode of enforcement was left to the applicable municipal law.

Speaking on the on-going work within the Working Groups on Insolvency Law and Secured Transactions, the delegate said that under insolvency law, the Indian law is proposed to be amended to have a new formal statutory regime relating to rehabilitation or winding up of sick companies and to have a new institutional mechanism in place with consolidated jurisdiction which was earlier being exercised in multiple forums.

As regards secured transactions, the delegate informed that in respect of financial assets held by banks and financial institutions India is proposing to enact a new law broadly which will allow securitization and reconstruction of such assets through companies specializing in such aspects. It will allow enforcement of securities held by banks and financial institutions without intervention of courts and it is proposed to have a central registry for such transactions to ensure transparency.

Speaking on the work of the Working Group on Transport Law, the delegate said that the Commission felt the need to review the current practices and laws in the area of the international carriage of goods by sea, noting certain gaps in the existing laws. The gaps so identified relate to the issues concerning transport documents; their relationship to the rights and obligations of the seller and the buyer of goods and; the legal position of entities that provide financing to a party to a contract of carriage.

The discussion at the first meeting, the delegate said, related to the scope of application of the draft Convention. Some delegations do not wish to extend the application of the proposed draft Convention to inland part of transportation and stress for a "port to port" maritime transport Convention only. While other countries expressed support to multimodalism pointing out that "door to door" operation is a fact of life. Considerable support was expressed for the Commission to take a broader door to door transport operation. The Working Group has therefore adopted the view that it would be desirable to include within the scope of Working Groups discussions, the door to door operations. These operations would be dealt with not by developing a multimodal regime, but rather by developing a regime that would resolve any conflict between the proposed draft instrument and mandatory provisions of treaties

governing land carriage in cases where sea carriage was complimented by one or more land carriage segments.

26. Comments received from the Government of **Malaysia**.

(a) UNCITRAL Convention on Assignment of Receivables in International Trade

1. Malaysia is currently studying the Convention. Since it relates to the work of other Ministries and agencies, Chambers has also referred the Convention for their consideration. Chambers is still awaiting their feedback.

(b) UNCITRAL Model Law on Electronic Signatures and draft Guide to Enactment of the Model Law.

2. Malaysia notes the recommendations by the UN General Assembly in paragraph 2 of Resolution 56/80 for "all States (to) give favourable consideration to the Model Law on Electronic Signatures, together with the Model Law on Electronic Commerce adopted in 1996 and complemented in 1998 when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based forms of communication, storage and authentication of information.
3. The provisions in the Model Law on Electronic Commerce relating to digital signatures were taken into consideration in the drafting of Malaysia's Digital Signature Act 1997.
4. Malaysia's is currently reviewing its laws, including the Digital Signature Act 1997 and the Evidence Act 1950, to ensure that they do not hinder electronic transactions and the implementation of the Government's Electronic Government plans. The Model Laws and Draft Guide will be useful tools in this exercise.

(c) Settlement of Commercial Disputes

5. Malaysia is reviewing its Arbitration Act 1967 in relation to the requirements of the UNCITRAL Model Law on International Commercial Arbitration. Malaysia is also considering whether to have separate Acts to deal with domestic arbitration and international arbitration.
6. Malaysia notes the discussions of the Working Group and the decisions of UNCITRAL on the revision of article 7(2) of the UNCITRAL Model Law on International Commercial Arbitration and the draft interpretative instrument regarding article II (2) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
7. Malaysia continues its support for the formulation of a Model Law for Conciliation. The concepts in the current draft are acceptable to Malaysia. However, we will still need to examine its provisions in the context of local needs as such needs would have to be considered in the implementation of the full conciliation methodology.

(d) Insolvency Law

8. Malaysia has also called for the formulation of strong insolvency and debtor-creditor regimes to prevent or limit financial crisis and to facilitate rapid and orderly workouts for excessive indebtedness in various for a following the 1997 financial crisis. Malaysia has had first-hand experience of the hardship that can be wrought through manipulations of the world's financial regimes by unscrupulous opportunists.
9. Malaysia supports the efforts of UNCITRAL to come up with a legislative guide that will be flexible enough to accommodate the requirements and interests of all States, be they developed countries, developing countries or Least-developed countries.

(e) UNCTAD

10. Malaysia notes and supports the efforts of UNCTAD to promote international co-operation in trade and development and the economic development of developing countries. Malaysia also notes the recommendations on best practices that have been made by the Commissions for future reference.

(f) UNIDROIT

11. Malaysia notes and supports the efforts of UNIDROIT to promote the unification of private law.

(g) HCPIIL

12. Malaysia notes and supports the efforts of HCPIIL to promote the unification of private international law, in particular in trade matters.
13. Malaysia is studying the 33 HCPIIL Conventions with a view to acceding to those which are relevant to Malaysia.

(h) General

14. It is also proposed that, depending on the views expressed by other AALCO Member States, Malaysia may consider supporting a further resolution that the Secretariat monitor the developments in these matters.

27. The Meeting then took up the item concerning the **Reports on the AALCO's Regional Arbitration Centres**,

28. **Dr. Deihim, Deputy Secretary-General** introducing the item concerning Progress report on the AALCO's Regional Arbitration Centres, said that the Reports of the Directors of Kuala Lumpur and Cairo Centres have been included in the AALCO document on this item. A copy of the Report of the Cairo Centre had been distributed today as well. The Director of the Lagos Centre would present her report.

He pointed out that UNCITRAL has taken important initiative for the consideration of arbitration law and rules and practices. The Secretariat of the AALCO welcomes any view or suggestions in this regard.

Due to the rapid flows of investment and globalization process, the Deputy Secretary-General requested the AALCO Member States to render their support and assistance to the regional arbitration Centres and to consider the inclusion of arbitration clause as one of the most recommended dispute settlement.

29. The **President** thanked Dr. Deihim for his introductory remarks concerning AALCO's Regional Arbitration Centres. He then gave the floor to Mrs. Eunice R. Oddiri, Director of the Lagos Centre to present her report.

30. The **Director of the Regional Centre for International Commercial Arbitration, Lagos**, presenting her report on the Centre's activities within the period 2001-2002 informed that a total of eleven (11) disputes were arbitrated on at the Lagos Centre under Ad Hoc arbitration proceedings – two of these were international cases which employed the UNCITRAL Arbitration Rules whilst nine (9) came under domestic arbitrations settled under the Domestic Arbitration Acts of Nigeria. In addition, resolution on Commercial disputes at the Centre by other Alternative Dispute Resolution (ADR) Methods such as mediation and conciliation increased from four (4) in 2000 to seven (7) in 2001. Of the seven (7) matters settled by ADR Methods, two (2) were by conciliation and five (5) by mediation.

As regards the promotional activities undertaken by the Centre she said that in view of the relatively young age of the Lagos Arbitration Centre – three (3) years old, there was need to create more awareness for the young Centre. In this regard, the Centre in 2001 introduced a mediation room for instructions in negotiation, mediation and conciliation. Reputable academic and experienced arbitrators and mediators from the sub-region were invited to the Centre on a quarterly basis to instruct aspiring arbitrators, mediators and conciliators who were awarded diplomas at the end of their participation. Other promotional programmes held by the Centre included seminars, workshops and conferences on the role of Arbitration in the settlement of disputes in the following sub-sectors:

- (a) **The Oil and Gas Industry:** An arbitration workshop was held for this industry, sponsored by the Nigerian National Petroleum Corporation (NNPC), Shell Petroleum Development Company Nigeria Limited, Chevron-Texaco Nigeria Limited, and Mobil Nigeria Unlimited in September 2001.
- (b) In November 2001, a workshop on arbitration as pertains to the banking industry in Nigeria was held in conjunction with the Chartered Institute of Bankers of Nigeria (CIBN). At this workshop, emphasis was on arbitration as a means of recovering bad debts within the banking industry as opposed to litigation.
- (c) A joint conference on – “The Role of the Courts in Enforcement of Foreign Arbitral Awards” – was held between the Regional Centre and the Ghanaian Bar Association in Accra, Ghana in January, 2002.
- (d) In March 2002, a workshop titled – “How can the various Chambers of Commerce within the Sub-Saharan Region contribute towards the making of arbitration and other ADR methods more widely acceptable option to litigation in the investment profiles within the Region?”
- (e) In May 2002, the Centre was invited to hold a workshop on Arbitration in the Communications Industry with special reference to the Nigeria Communications Commission (NCC). In this instance, the Regional Centre was called upon to demonstrate how the powers conferred on NCC by its enabling statute to act as Arbitrators in disputes arising between Licensees of NCC and other Operators/Service Providers in the Communications Industry including consumers or beneficiaries of the service provided can be utilized by NCC. The programme was sponsored by the Nigerian Communications Commission.

She stressed that the whole essence of Promotional programme was to promote:

- (i) The wider use of arbitration in the sub-region for settling commercial disputes.
- (ii) To encourage the wider use of the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules.

As regards **co-operation agreements** concluded by the Centre, she informed the Meeting that the Centre had continued to enter into co-operation agreements with various international organizations in order to forge reciprocity in exchange of information and in collaboration of activities. This was a way of intimating investors of the existence of the Centre and its role in proffering international arbitration to foreign investors within the sub-region; in furtherance of which she paid a courtesy call on the Chairman of the Nigerian Investment Promotion Commission (NIPC) on 17th June, 2002.

With a view to promote utilization of international panel of arbitrators the Centre called upon to proffer names of reputable and experienced arbitrators for use by disputing parties who have agreed to arbitrate. Very often requests were for arbitrators of different nationalities from the parties themselves. The Centre's endeavour was to upgrade its list of domestic and international arbitrators, mediators and conciliators.

In her concluding remarks she observed that one of the major problems identified by the Centre so far in the practice of international arbitration within the sub-region was the lack of the efficacious implementation of the New York Convention of 1958 on the Enforcement of Foreign Arbitral Awards. This was a Convention signed between and amongst State Parties but which allows individuals to enforce

arbitral awards delivered in one state party against a party in another state to the Convention. It therefore follows that where a state was not a signatory to this Convention, enforcement of a foreign arbitral award against a party in a non-signatory state becomes impossible. She urged member states of AALCO who were not yet signatories or who have not ratified the 1958 Convention on the Enforcement of Foreign Arbitral Awards to do so.

(The meeting thereafter adjourned)