(b) That informal receipts may not create clear legal rights and liabilities in regard to shippers and carriers. Since the value of cargo was often very high, it was essential that parties should know their rights and obligations, and therefore, a formal document such as a Bill of Lading was necessary.

He suggested, however, that since the matter was connected with recent technological developments in international trade, it required further study by member governments.

10. *Applicability of the convention to ocean carriage where no document is issued to evidence the contract*

The Sub-Committee was of the view that the applicability of the convention should not be extended to such contracts. One delegate was of the view that the issue of a standardised form of document should be made compulsory in contracts of ocean carriage, thus eliminating oral contracts of carriage.

11. *Contents of the contract of carriage of goods by sea*

The Sub-Committee agreed that provision should be made to ensure that informal documents that may not be regarded as Bills of Lading, but which are in many ways vital to the contract itself, should contain certain information required to ensure that those persons relying on such documents are not misled. The Sub-Committee agreed that the information required should include, in addition to that required by Article 3(3), the following :

(1) The date and place of execution.

(2) The destination of the goods, if known at the time.

(3) The name and address of the contracting shipper.

(4) The name and address of the consignee, if available at the time.

(5) Express notation to the effect that the document is not negotiable.

(6) The name and address of the contracting carrier.

12. *The validity and effect of letters of guarantee given to secure a false clean Bill of Lading*

It was pointed out that a practice had developed whereby a shipper obtains from the carrier a false clean Bill of Lading which is issued to him by the latter on the basis of a letter of guarantee supplied by the former. In this way, third parties receiving such a clean Bill of Lading would be misled with regard to the state of the goods covered by such Bill of Lading. The Sub-Committee was unanimous in its decision that every effort should be made to prevent this practice. The Sub-Committee agreed to submit the following proposals to the UNCITRAL Working Group for their consideration as reflecting the views of the Sub-Committee.

(1) Where a carrier makes an incorrect statement in terms of Article 3(3) that goods are shipped in apparent good order or condition, or to the like effect, the carrier, shall be liable to any person who might reasonably be contemplated as likely to rely on the correctness of such statement in respect of any loss or damage suffered by him as a result of such reliance.

(2) In any action brought in respect of an alleged incorrect statement, the burden of proof shall be on the claimant to establish.

(a) that it could have been reasonably contemplated that he would rely on the incorrect statement, and.

(b) that loss or damage has resulted to him by such reliance.

(3) In any such action, if the allegation that the statement was incorrect is denied by the carrier, the burden of proof shall be on him to prove the correctness of such statement.

(4) In any such action, the carrier shall in any event not be liable if he proves that he, his servants and agents

took all reasonable measures to ensure the correctness of such statement.

(5) Where the carrier makes such an incorrect statement in return for a promise or agreement by any person that the carrier shall be indemnified against loss resulting to the carrier from the making of such statement, such promise or agreement shall be of no force or avail in law.

13. *The legal effect of the Bill of Lading in protecting the good faith purchaser of the Bill of Lading*

The question discussed by the Sub-Committee was whether the convention should, in addition to Article 3(4) as amended by Article 1(1) of the Protocol of 1968, include additional provisions with respect to the rights of good faith purchaser of negotiable documents of title. The Sub-Committee agreed that there would, in principle, be no objection to increasing the protection given to them since this would facilitate international trade agreements.

The Sub-Committee decided to submit the following proposals for the consideration of the UNCITRAL Working Group :

(1) That, where bills are issued in a set, the one intended to be negotiated should be marked negotiable, and the others non-negotiable. This would prevent fraud on third parties, as at present each bill in the set is negotiable.

(2) That the carrier should be at liberty to deliver the goods only to the holder of the negotiable copy, and that such delivery should constitute a good discharge.

(3) That liens, rights or charges in respect of the goods claimed as existing between carrier and shipper during shipment be marked on the document of title.

(4) That the notation (such as "or order") which confers the status of negotiability should be standardised.

INTERNATIONAL COMMERCIAL ARBITRATION

1. The Sub-Committee was of the view that developing countries with their increasing trade and commercial activities now considered the question of international commercial arbitration as a matter of great importance. It was observed that in America and in Europe, institutional arbitration was well developed while in the developing countries of Asia and Africa, institutional arbitration was less developed and that effort should be made by these member states to develop institutional arbitration so that the flow of arbitration to countries in Europe and America could be reduced. It was also observed that while a regional arbitral institution had been created for the Asian region under the auspices of ECAFE, there was no parallel institution for the African region. The Sub-Committee was of the view that an effort should be made to develop such an institution to serve the African region.

2. The Sub-Committee believed that contracts entered into by developing countries either with developed countries or private foreign firms belonging to developed countries often contained provisions providing for settlement of disputes by arbitration. However, in view of the fact that developing countries were often in an inferior bargaining position, the arbitration clauses contained in these agreements often worked unfavourably to the interests of developing countries. This pattern was seen partioularly in regard to the fixation of the venue of arbitration. The venue of arbitration was important for several reasons. Thus the principles of private international law that applied to arbitration were dependent on the venue. Again, acute foreign exchange difficulties common to most developing countries made it difficult for such countries to afford proper legal representation at foreign venues. The Sub-Committee was also of the view that on balance it was

preferable that the venue should be decided by the parties to the agreement at the time that the agreement was entered into, for the reason that relations between parties at that time could be expected to be cordial. It was also agreed by the Sub-Committee that the venue of an arbitration should be decided with reference to the possible subject matter of arbitration. The availability of witnesses, the cost of arbitration, and the question of the enforceability of the award were all matters to be taken into account in determining the venue of an arbitration.

3. The Sub-Committee was of the view that the principles governing the law of arbitration should be, as far as possible, uniform and that all attempts should be made towards achieving this goal. The observation of some members of the Sub-Committee disclosed that the arbitral laws of their respective countries bore striking similarities in some respects.

4. The Sub-Committee also discussed the question as to whether it would be better to create an institution for international commercial arbitration under the auspices of the United Nations or whether it would be more effective if such an institution was created by corporation between the respective trade chambers of these countries. The Sub-Committee was of the view, that, since the matter of international commercial arbitration was one which intimately concerned the commercial community, and since those involved in it would prefer to keep their problems within the closed framework of the commercial world, it would be preferable that such an institution should be created under the auspices of their respective commercial organisations.

5. On the question of the constitution of an ad hoc arbitral tribunal, the Sub-Committee was of the view that the most desirable method was that each party to the arbitration should have a right to have his nominee as an arbitrator, and that a third person should be nominated, in the case of ad hoc arbitration, by the nominee arbitrators or by a third person, and in the case of institutional arbitration by the institution. The Sub-Committee was also of the view that it was not suitable to

perpetuate the system of having a referee whose function it was to agree with one of the two members of the tribunal in case there was disagreement between them. The Sub-Committee was of the view that the third arbitrator so appointed should have the discretion to decide the matter before him independently without reference to the views taken by the other two arbitrators.

6. With regard to the applicable law to determine the rights and obligations of the parties under the contract which was the subject matter of arbitration, the Sub-Committee was of the view that this should be left to the parties to decide for themselves at the time the contract was entered into. Failing such agreement, the applicable law should be determined by the conflicts rules prevailing at the venue of arbitration.

7. On the question of procedure in arbitration, the Sub-Committee was of the view that there should be minimum procedural standards which were essential for the fair and efficient conduct of an arbitration.

The minimum procedural standards agreed upon by the Sub-Committee were the following:

(a) A party should have adequate means and opportunity to present his case by proper legal representation before the tribunal.

(b) The arbitral tribunal should have adequate powers to enable it to make an effective investigation and adjudication.

(c) The arbitral tribunal should be under a duty to observe certain standards which tend to an impartial and equitable decision.

(d) A party should have an adequate opportunity of challenging the jurisdiction of the tribunal or challenging the arbitrators.

8. With regard to the finality of an arbitral award, the Sub-Committee was of the view that it should be subject to the

supervisory jurisdiction of the Courts of Law before which it could be challenged by a party to the arbitration dissatisfied with the award. But it was also agreed that jurisdiction should be exercised only in limited circumstances, such as where the arbitrators had acted without jurisdiction, or where the award was manifestly incorrect.

9. The Sub-Committee also considered the question of the enforcement of foreign arbitral awards. However, in view of the fact that this matter is at present dealt with by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards made in New York on 10th June, 1958, and that the General Assembly had unanimously recommended the wider acceptance of this Convention, the Sub-Committee did not feel that the matter required extensive consideration. The Sub-Committee was also of the view that States which had not yet acceded to the Convention should do so without delay.

10. The Sub-Committee expressed its appreciation of the work of UNCITRAL in the development and improvement of the various aspects of international trade law, and its indebtedness to the observer from the UNCITRAL Secretariat, Prof. K. Sono, for his assistance to the Sub-Committee. The Sub-Committee also thanked Mr. M. Van Hoogstraten, the Observer from the Hague Conference on Private International Law for his help at its deliberations.