UNCITRAL Arbitration Rules

The Sub-Committee noted that UNCITRAL had invited the General Assembly of the United Nations to recommend at its thirty-first session the use of the UNCITRAL Arbitration Rules in the settlement of disputes arising in the context of international commercial relations, and that the Rules had been prepared after full consultation with arbitral institutions and centres of international commercial arbitration. The examination of the UNCITRAL Arbitration Rules by the Sub-Committee was directed towards ascertaining whether any modification was needed to adapt the Rules to the special needs of the region. After examination of the Rules, the Sub-Committee agreed in general that the Rules appeared to be adequate for use by parties in the Asian-African region.

The Sub-Committee also noted that the UNCITRAL Arbitration Rules incorporated many procedural provisions designed to cope with a complex and cumbersome dispute arising from a complicated international transaction. However, in the case of disputes involving a small or simple contract many of the procedural complexities could be eliminated by agreement of the parties. In such cases, the nature of any possible dispute could be easily determined at the time of the original contract and it would be possible and advisable to agree upon the place of arbitration, the language to be used, the use of sole arbitrator and, perhaps, even the name of the arbitrator. It was also pointed out that it might be advisable for the parties to agree in advance on an arbitral institution which could provide administrative facilities for the arbitration. It was also considered advisable for the parties to specify the period within which an arbitral award must be rendered.

Relationship between arbitration rules chosen by the parties and municipal laws

The arbitration rules chosen by the parties, whether the rules were for *ad hoc* arbitration or of an arbitral institution, did not bind the State. Such rules might be in conflict with the municipal law, either at the place of arbitration or at the place where execution of an award was sought. In such cases the parties would be deprived of the right to conduct their arbitration in conformity with the rules upon which they had agreed, no matter how appropriate and reasonable those rules might be. The Sub-Committee, therefore, felt that certain measures should be taken to ensure that an arbitration could be carried on pursuant to the arbitration rules of the parties' choice and that the award rendered be recognized and enforced by all States. It was pointed out that the 1961 European Convention on International Commercial Arbitration and, indirectly, 1965 Convention on the Settlement of Investment Disputes between States and Nationals of other States were directed to that goal. The Sub-Committee was of the opinion that the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards was not clear as to the operative effect of municipal laws in relation to arbitration rules. The Sub-Committee consequently decided to invite the Committee to take action as set forth in the resolution reproduced at pages—143-44.

Establishment of certain minimum procedural standards to be followed in arbitration

It was noted that the majority of international commercial arbitrations were conducted by existing arbitral institutions. It was pointed out that the rules of some of those arbitral institutions in developed countries did not provide adequate procedures to protect the interests of parties from the developing countries. It was noted that Article V, paragraph 2(b) of the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards permits a contracting State to refuse recognition and enforcement of an arbitral award on the basis of public policy. The use of this ground by the courts in the Asian-African region would indirectly but effectively persuade such arbitral institutions to change

their rules. However, in view of the fact that such a recommendation to the members States of the Committee to make use of the public policy provision of the 1958 Convention might operate as an obstacle to the uniform interpretation and application of the Convention the Sub-Committee felt that it was important to clarify the matter within the framework of the Convention itself, possibly through a Protocol annexed to that Convention. The Sub-Committee accordingly invited the Committee to take action as indicated in the resolution reproduced at pages 143-44.

Exclusion of sovereign immunity

The Sub-Committee noted that many governmental agencies were engaged in international commercial activities throughout the Asian-African region, and felt that the availability of arbitration for settlement of disputes was indispensable for such transactions because of the obvious difficulty in submitting claims to a national court. However, it was pointed out that the doctrine of sovereign immunity had successfully been invoked even in an arbitration. In view of the fact that the invoking of sovereign immunity where a governmental agency was a party to a commercial transaction would bring in an element of uncertainty to the transaction, the Sub-Committee was of the view that this point should be clarified, possibly through a Protocol annexed to the 1958 U.N. Convention.

The 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The Sub-Committee took note of the existence of a unanimous resolution adopted by the U.N. General Assembly in 1973 inviting the States which had not ratified or acceded to the 1958 U.N. Convention to consider the possibility of adhering thereto. The Sub-Committee also took note that the Convention, which is presently in force, has been ratified or acceded to by 51 States including 21 States from the Asian-African region. In view of the growing importance of arbitration as an effective means for

the settlement of disputes arising from international commercial transactions, the Sub-Committee considered it important to recommend to those member States of the Committee, which have not ratified or acceded to the Convention, to ratify or accede to that Convention.

Establishment of Regional Arbitration Centres

The Sub-Committee noted that while many arbitral institutions were located in the developed countries in the West, only a few were in the Asian-African region. Although some of the countries in the region did have chambers of commerce providing arbitration facilities, their use was mainly confined to settlement of disputes between local parties. It was felt that even the use of the UNCITRAL Arbitration Rules could be enhanced if this region could provide assistance in administering *ad hoc* arbitrations through the establishment of a regional centre or centres with adequate facilities. The promotion of inter-institutional arrangements for effective co-operation among the existing institutions in the region through a regional arbitration centre could also create an atmophere that international commercial arbitration proceedings need no longer be confined to the West. The Sub-Committee, therefore, decided to request the Secretariat to investigate the feasibility and usefulness of establishing regional arbitration centres and to ascertain the means of attaining effective inter-institutional co-operation emong the existing arbitral institutions in the region. The Sub-Committee agreed that this matter be given further consideration by it at a future session after the Secretariat's study was completed.

To give effect to the recommendations made by the Trade Law Sub-Committee, the Plenary of the Committee on the 5th of July 1976 adopted the following resolution :

The Asian-African Legal Consultative Committee

1. *Recommends* to the States of the Asian-African region which have not ratified or acceded to the 1958 United

Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards to consider the possibility of ratification or accession to the Convention.

2. *Commends* the United Nations Commission on International Trade Law for the succeessful conclusion of its work on the UNCITRAL Arbitration Rules and recommends the use of the UNCITRAL Arbitration Rules in the settlement of disputes arising in the context of international commercial relations.

3. *Invites* the United Nations Commission on International Trade Law to consider the possibility of preparing a protocol to be annexed to the 1958 United Nations Convention on the Recognition and Enforcement of Foriegn Arbitral Awards with a view to clarifying, *inter alia*, following :

(a) Where the parties have adopted rules for the conduct of an arbitration between them, whether the rules are for *ad hoc* arbitration or for institutional arbitration, the arbitration proceedings should be conducted pursuant to those rules notwithstanding provisions to the contrary in municipal laws and the award rendered should be recognized and enforced by all Contracting States;

(b) Where an arbitral award has been rendered under procedures which operate unfairly against either party, the recognition and enforcement of the award may be refused;

(c) Where a governmental agency is a party to a commercial transaction in which it has entered into an arbitration agreement, it should not be able to invoke sovereign immunity in respect of an arbitration pursuant to that agreement".

The recommendations of the Committee on the question of the adoption of a protocol to the 1958 Convention on the

Recognition and Enforcement of Foreign Arbitral Awards, were transmitted to the UNCITRAL Secretariat.

Since the question of international commercial arbitration was split into two specific questions relating, first, to the adoption of a Protocol to the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards and, secondly, the Establishment of Regional Arbitration Centres, these two are treated as separate subjects and discussed separately in the notes concerning Baghdad and Doha Sessions.

Baghdad Session (1977)

(A) Adoption of a Protocol to the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards

At the Baghdad Session of the Committee, the question of adoption of a protocol to be annexed to the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards was given further consideration by the Trade Law Sub-Committee. The Sub-Committee noted that UNCITRAL had prepared a document (A/CN/9/127) containing the resolution adopted by the Committee at its last session, to be placed before the tenth session of UNCITRAL for consideration, and that it would also prepare a background paper (A/CN. 9/127/Add. 1) to assist UNCITRAL to consider that resolution of the Committee. In relation to that resolution, the Sub-Committee confirmed the following:

(a) That the formal resolution of the Committee should be considered in the light of the text of the report of the Sub-Committee at that session which led to that resolution;

(b) That sub-paragraphs (a) and (b) in paragraph 3 of that resolution were inter-related; and

(c) That the primary intention of sub-paragraph (c) was to prevent a governmental agency from invoking sovereign immunity, at all stages of arbitration, including the stage of recognition or enforcement of the arbitral award.

In view of the vital importance of the proposals contained in the resolution of the Committee for the promotion of commercial arbitration in the Asian-African region as an effective means of settling disputes, the Sub-Committee recommended that the Committee should be represented by its Secretary-General at the tenth session of UNCITRAL to reflect the views of the Committee fully before that forum. The Sub-Committee also recommended that the delegations to the tenth session of UNCITRAL from member States of the Committee should be properly briefed in regard to the resolution of the Committee, so that it could be effectively discussed by UNCITRAL. The recommendations of the Sub-Committee were endorsed by the plenary of the Committee.

The above recommendations were duly communicated to the UNCITRAL Secretariat. To brief the delegations to the tenth session of UNCITRAL from member States of the Committee in the matter, a comprehensive note was prepared by the Committee's Secretariat and sent to all members of UNCITRAL and the member governments of the Committee, so that the matter could be effectively discussed in UNCITRAL.

At the tenth session of UNCITRAL the subject was taken up for consideration by the Committee of the Whole II which met between the 6th and 10th June, 1977. The meeting was attended by the Secretary-General and the Deputy Secretary-General of the Committee. In the comments on the Committee's proposal prepared by the UNCITRAL Secretariat (A/CN. 9/127/Add. 1) it was observed that there was need to study carefully the matters indicated in the Committee's recommendations and to find solution to the

difficulties which had been pointed out. But, at the same time, the UNCITRAL Secretariat observed that the best means through which the desired result could be achieved might not be by means of a protocol to the 1958 Convention, but by some other means. The Secretary-General of the Committee made a statement before the Committee of the Whole explaining the Committee's recommendations and the matter was discussed at length in which a large number of representatives participated. The Secretary-General pointed out that the Committee would well have recommended adoption of a regional convention on the lines of the European or the Inter-American convention to achieve the object, but since the questions to be resolved were of global concern and not merely regional, it would be preferable to work out solutions under U.N. auspices. The representative of the U.S.A. strongly supported the move for tackling the difficulties pointed in the Committee's recommendations and urged a thorough study of the matter, particularly the question as to what would be the most appropriate means by which the result could be achieved. There was agreement in the Commission that the matters which the Committee had brought to the attention of the Commission raised important issues in the context of international commercial arbitration and justified further consideration by the Commission. The predominent opinion in the Commission was that if it were decided at a later stage to implement the proposals of the Committee, the preparation of a Protocol to the 1958 Convention might not be an appropriate approach. Various suggestions were made about the appropriate means to implement the proposals of the Committee, including the possibility of having a separate convention in simpler terms. Another suggestion was about the possibility of preparing a new international convention of a uniform law on arbitration which could draw upon the 1961 and 1966 European Conventions.

In regard to the Committee's recommendation for exclusion of sovereign immunity, a view was expressed that an

optional model clause might be drafted which could be used in conjunction with UNCITRAL Arbitration Rules under which States, State-owned agencies and entities of public law which enter into transactions with private firms would expressly agree not to invoke sovereign immunity in connection with arbitration and possible enforcement of the award. Some reservations were also expressed that as a matter of principle, in so far as States and governments are concerned, the issue of sovereign immunity was a part of a more general and complex problem having an obviously political and public international law character. At the same time it was pointed out that the foreign trade organisations in Socialist countries, being autonomous legal persons, had never invoked such immunity. Discussions were held in detail regarding the issues which needed further study and the Commission decided that the UNCITRAL Secretariat should make a complete study of the problems in consultation with the Committee and that it should also seek information from governments, regional and international organisations and arbitral institutions.

(B) Establishment of Regional Arbitration Centres

The Trade Law Sub-Committee at the Kuala Lumpur Session (1976) had requested the Committee's Secretariat to undertake a feasibility study for establishing regional arbitration centres in the Asian-African region and to ascertain the means of attaining inter-institutional cooperation among the existing arbitral institutions. The Sub-Committee had expressed the view that the use of the UNCITRAL Arbitration Rules would be enhanced if assistance could be provided in administering *ad hoc* arbitrations through the establishment of a regional centre or centres in the region with adequate facilities.

In pursuance of the said recommendations a study was prepared by the Committee's Secretariat after extensive discussions with the officials of UNCITRAL, certain

organisations of trade, arbitral institutions and experts in the field. The study contained a general survey of the existing pattern of international commercial arbitrations, the phenomenal increase in the number of such arbitrations in which governments and government undertakings were involved, the need to promote arbitral institutions within the region and the support that could be expected from various quarters to the taking up of the project. The conclusions made in the study were in favour of establishment of six arbitration centres in the region located one each in six sub-regions, namely East Asia, South-East Asia, West Asia, North Africa, East Africa and West Africa. It was, however, pointed out that the scheme could initially work with two centres and other centres could be established in the light of experience and volume of work. The study further mentioned that the scheme for establishment of arbitral centres would be complementary to the Committee's work on model or standard contracts for use in international trade and that the scheme would also be in keeping with the heads of states and governments of non-aligned nations for greater emphasis on economic cooperation by providing adequate facilities for settlement of disputes within the region in regard to economic matters. This study was placed before the Trade Law Sub-Committee during the Baghdad Session of the Committee held in February, 1977.

At the Baghdad Session, the Trade Law Sub-Committee after extensive deliberations made the following recommendations :

"1. That two arbitration centres be established within the region, one in Asia and one in Africa ;

2. That the functions of the centres be, *inter alia*,

(a) Promoting international commercial arbitration in the region;

(b) Coordinating and assisting the activities of existing arbitral institutions, particularly among those within the region;

(c) Rendering assistance in the conduct of *ad hoc* arbitrations, particularly those held under the UNCITRAL Arbitration Rules;

(d) Assisting the enforcement of arbitral awards; and

(e) Providing for arbitration under the auspices of the centre where appropriate.

3. That in order to implement the proposals noted above, the Secretary-General of the Committee be requested:

(a) To approach Governments and existing arbitral institutions with a view to obtaining suitable facilities together with the necessary finances for the projected centres;

(b) To take the necessary steps to establish the centres at appropriate locations and to assist in providing a suitable administrative structure for the independent functioning of the centres; and

(c) To assure that the centres carry out the functions listed in sub-paragraph (2) above as they become practicable".

The Sub-Committee also requested the Secretariat to present a progress report on the activities undertaken with regard to the above recommendations at the next session of the Committee. The recommendations of the Sub-Committee were approved by the Plenary at its eighth meeting held on 26th of February 1977.

In pursuance of the aforesaid decision, the Committee's Secretariat prepared a scheme for the establishment of two arbitration centres together with a Memorandum which was transmitted to all member governments in March 1977. Although several governments generally evinced their

interest in having the centre in their countries, concrete proposals were made by two governments, namely the Arab Republic of Egypt in regard to the centre to be located in Africa and the Government of Malaysia in regard to the centre to be located in Asia.

The Secretary-General had extensive discussions with a number of governments, the representatives of UNCITRAL and several chambers of commerce in regard to the location and scope of functions of the two arbitral centres. It was clarified that in deciding upon the location of the centres the considerations which had been emphasized by international organisations and representatives of trade had to be kept in view, namely that the centres should be located in such places where the political climate was such that their independent functioning could be ensured, where the volume of international trade and commerce was of sufficient mangnitude and where the local regulations concerning foreign exchange and transfer of funds were not stringent. The Secretary-General also pointed out that the centres were to function for an initial period of two to three years under the supervision of this Committee and the necessary facilities concerning office accommodation and the provision of the staff had to be provided by the host government during that period.

In regard to the location of a centre in Africa, extensive discussions were held between the Secretary-General of the Committee and the concerned officials of the Egyptian Government and the chambers of commerce. The location of a centre in Cairo was deemed appropriate, but having regard to the vastness of the region and taking into account that the Cairo centre might be made use of by several countries in West Asia, it was submitted for consideration whether it would not be appropriate to attempt at the location of another centre on an experimental basis in West Africa. This view was put forward during the Secretary-General's discussions with the Governments of Ghana and Sierra Leone.

As regards location of a centre in Asia, discussions were held with the concerned authorities in Malaysia, Bangladesh Thailand, Singapore, Indonesia and the Philippines as location of a centre in a country in South East Asia appeared to be more appropriate even apart from the fact that Malaysia was the first country in Asia which had put forward concrete proposals in this regard. The location of the centre in Kuala Lumpur appeared to be generally acceptable to most of the countries in South East Asia and definite advantages could be obtained by locating the centre there, especially in view of the keen interest of the Malaysian Government and the absence of location of too many international or regional bodies in that country. Some of the chambers of commerce with whom discussions were held expressed the view that the centre should have an independent location and that it should not be located in the premises of any chamber of commerce in any country.

As regards the functions of the centre to be located in this region, certain chambers of commerce were of the opinion that the centre should primarily function as a promotional and coordinating body and that the existing work of arbitration performed by the chambers of commerce or arbitral institutions within the region should not be taken over by the centre. Views were also expressed that the centre in Kuala Lumpur could extend its services to the Australasian region having regard to the enormous volume of trade and commerce between the countries of South East Asia and Australasia. The Secretary-General explained in detail that the establishment of the centre would in fact benefit the chambers of commerce and arbitral institutions within the region by bringing about coordination and cooperation in their activities and that the centre would perform a unique function which was not being carried out by any other organisation or body, namely the assistance to be rendered in *ad hoc* arbitrations. The Secretary-General also pointed out that in bulk transactions on primary commodities as also in the execution of development projects in the countries of the

region where governments or governmental undertakings were parties, *ad hoc* arbitrations were the most suitable where the parties had an adequate say in the matter of appointment of the arbitrators. He explained that the UNCITRAL Arbitration Rules which had been recommended by the General Assembly and accepted by a large number of countries including the Soviet Union and the United States of America would greatly facilitate the conduct of *ad hoc* arbitrations and the proposed regional centre could provide the necessary facilities for conduct of such arbitrations either directly or through its agencies in various countries served by the centre.

The Secretary-General also had occasion to discuss the various functions to be performed by the centres with international organisations and authorities in other regions including the UNCITRAL Secretariat, the American Arbitration Association, the Council of Europe and the Organisation of American States, and considerable support was found among these bodies for the centres.

In the light of the above discussions, a revised scheme concerning the functions of regional arbitration centres under the auspices of the AALCC was prepared for consideration of the Committee at its Doha Session.

Doha Session (1978)

(A) Adoption of a Protocol to the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The Trade Law Sub-Committee reviewed the action taken by UNCITRAL in respect of the recommendations of the Committee on this subject as reported to it by the Secretary-General of the Committee. The Sub-Committee took note with satisfaction of the response by UNCITRAL to its recommendations and expressed its intent to consider the result of the UNCITRAL Secretariat's studies and consultations at the next session of the Committee.

The Sub-Committee was agreed that, in principle, preference should be given to a universal convention in view of the fact that the pattern of trade was world-wide. However, the Sub-Committee was of the view that it should reconsider its position if the activities of UNCITRAL in the matter of arbitration should not lead to satisfactory results. The recommendations of the Sub-Committee were endorsed by the plenary of the Committee.

(B) Establishment of Regional Arbitration Centres

The question of establishment of regional centres for commercial arbitration in the region was reviewed by the Trade Law Sub-Committee during the Doha Session on the basis of a progress report presented by the Secretary-General. The Sub-Committee approved the establishment of two centres in Kuala Lumpur and Cairo respectively and requested the Secretary-General to examine the possibility of establishing a third centre in other regions, such as West or East Africa. The Sub-Committee after discussion in the matter submitted the following recom mendations which were endorsed by the Plenary:

(1) That the member governments be invited to insert in any arbitration clause a reference to the UNCITRAL Arbitration Rules, in accordance with the recommendation of the General Assembly of the United Nations, and that they should avail themselves of the facilities provided by the regional arbitration centres:

(2) That the member governments be invited to provide the regional centres with information concerning the arbitration facilities provided by the chambers of commerce and other institutions in their countries and to encourage them to cooperate with the arbitration centres by furnishing data and by participating in seminars and conferences which may be organised by the centres;

(3) That the member governments be invited to give wide publicity to the establishment of the arbitration centres and to encourage their chambers of commerce to be associated with the arbitration centres and to act as a liaison within the country for the purpose of discharging some of the functions entrusted to the centres.

Pursuant to the above recommendations, a Regional Centre for Commercial Arbitration has been established at Kuala Lumpur with effect from 1st April 1978 under the auspices of this Committee. The functions of the Centre will be to promote the institution of arbitration as an effective means for settlement of disputes where parties belong to different countries, to coordinate the activities of existing arbitral institutions and chambers of commerce in regard to commercial arbitration, to render assistance and provide facilities for the conduct of arbitration as also to promote the use of UNCITRAL Arbitration Rules recommended by the U.N. General Assembly. The activities of the Centre will generally be conducted in relation to Asia, but are likely to be extended to the Australasian region. Negotiations for the establishment of another centre in Cairo are in progress and location of a third centre in an African country is contemplated.

(III) INTERNATIONAL LEGISLATION ON SHIPPING

With the expansion of merchant fleets in recent years in response to increasing demand for the services provided by them, ship-owners soon came to occupy a dominant bargaining position in relation to shippers. This dominant position was reflected in the terms of contracts of ocean carriage which were often contracts of adhesion and were weighted heavily in favour of the ship-owners. The shipping lines also soon organised themselves into liner conferences whose object

was to secure a near monopoly in the carriage of cargo, and these conferences systematically adopted practices designed to perpetuate their monopolistic position. The cargo interests of developed countries occasionally attempted to redress the imbalances by various means, one example being the attempt to regulate carriage under bills of lading through the Brussels Convention of 1924. But such attempts were only partially successful. After decolonisation and the emergence of developing countries, the clash between the ship-owning interests of the developed countries and the interests of shippers of developing countries further made the international situation in this matter extremely complex.

Some of these difficulties have arisen principally because the shippers of the developing countries are relatively less organized than their counterparts in the developed countries and have no national lines to which they can turn. The realisation of this position has led the developing countries to direct their efforts in two directions. First, they have attempted to establish their own merchant fleets to serve their trade with the object of developing a new industry as also of saving foreign exchange. Secondly, they have attempted to secure by negotiations more favourable terms from shipping lines for the carriage of their cargos. These efforts have been hindered by the fact that ship-owners of the developed countries do not wish to see any change in their entrenched position.

The developing countries have also increasingly realised that existing shipping laws and practices, including international shipping legislation, have been created without their participation and without taking adequate account of their interests. Apart from this, it is also accepted that certain provisions of the shipping laws are obsolete, while standard contract forms which are generally used for ocean carriage and marine insurance contain many clauses which are archaic, incomprehensible and unfair.

As a result, the developing countries have attached great importance in UNCTAD and UNCITRAL to the efforts to reform the law and practices in the sphere of shipping. Both the institutions have established their own working groups on international legislation on shipping which have under their study topics such as the bills of lading, charter parties, marine insurance and general average. In UNCTAD, in the field of shipping, the most important achievement is the Convention on a Code of Conduct for Liner Conferences concluded in April 1974. This Convention has since been ratified or signed by over 30 countries, but the provisions for its entry into force have not yet been fully met.

Currently, UNCTAD has a comprehensive programme with regard to ocean shipping matters, particularly those affecting developing countries. Several inter-governmental conferences have been convened to consider ocean shipping matters including international legislation on shipping, international multi-modal transport and standardisation of container specifications.

A related question concerning the examination of the responsibilities of the ocean carrier under bills of lading, so as to establish a balanced allocation of risks between the cargo-owner and the carrier was accorded high priority in UNCITRAL. Towards this end, a Working Group on International Legislation on Shipping was established at UNCITRAL's second session in 1969 and entrusted with the task of examining the rules and regulations concerning bills of lading, including those contained in the Brussels Convention of 1924 and the Brussels Protocol of 1968 with a view to revising and amplifying those rules so that a new international convention might be adopted under the auspices of the United Nations. In the execution of the mandate entrusted to it, the Working Group had several sessions and at its eight session (1975) adopted a final text of 'Draft Convention on the Carriage of Goods by Sea'.

This draft was placed before UNCITRAL at its eighth session held in April 1975. UNCITRAL decided to consider the Draft Convention at its ninth session and in the meantime to circulate it to all governments and interested international organisations for their comments. At its ninth session held from 12 April to 7 May 1976, UNCITRAL considered the Draft Convention in the light of the comments received from governments and international organisations, approved the text of the Draft Convention and recommended that the U.N. General Assembly convene an international conference of plenipotentiaries, as early as practicable, to conclude a Convention on the Carriage of Goods by Sea on the basis of the Draft Convention. In response to the UNCITRAL's recommendations, the General Assembly, by resolution 31/100, on 15 December 1976, decided that the United Nations Conference on the Carriage of Goods by Sea shall be convened in 1978. Subsequently, the General Assembly accepted the invitation of the Federal Republic of Germany to hold the plenipotentiary conference in Hamburg from 6 to 31 March 1978.

Work of the AALCC

The Committee at its Accra Session (1970), had taken a decision that the Committee and its Secretariat should give more attention to trade law problems, and that International Legislation on Shipping should be one of the topics to be studied in some detail with the object of assisting the member governments in their examination of the work of UNCITRAL and UNCTAD in that field and in preparing them for any plenipotentiary conference that might be convoked by the United Nations. In pursuance of this decision, the Secretariat of the Committee has been closely following the work of these two bodies and has submitted studies to member governments from time to time.

In relation to the work of UNCTAD, the Committee's Secretariat kept under review the events culminating in the

adoption of the Convention on a Code of Conduct for Liner Conferences as part of the consideration given to the work on International Legislation on Shipping within that body.

In relation to the work of UNCITRAL on bills of lading, which has now culminated in the adoption of the Convention on the Carriage of Goods by Sea by the Hamburg Conference, the Committtee's Secretariat prepared replies to the questionnaires on bills of lading sent by UNCITRAL. The replies were circulated to member governments and certain other Asian-African governments to assist them in formulating their views. These were also considered at the Tokyo Session (1974) of the Committee and the views of the Sub-Committee were transmitted to the sixth session of the UNCITRAL Working Group.

At its sixth session (1975), the UNCITRAL Working Group on Shipping had made an extensive study of the following topics: (i) geographic and documentary scope of application of the Convention; (ii) elimination of invalid clauses in bills of lading; (iii) deck cargo; (iv) carriage of live animals; and (v) definitions of 'carrier', 'contracting carrier' and 'actual carrier'. Since the report of the Working Group had revealed differences of opinion, the Committee's Secretariat prepared a study on these topics and circulated it to its member governments and certain other governments.

Baghdad Session (1977)

At its ninth session (1976), UNCITRAL approved the text of the Draft Convention on the Carriage of Goods by Sea and resolved that the U.N. General Assembly should convene a conference of plenipotentiaries to elaborate a Convention on the basis of the Draft Convention. Following this, the Committee's Secretariat prepared an elaborate study on the Draft Convention and placed it before the Trade Law Sub-Committee during the Baghdad Session of

the Committee held in February 1977. The study set out the genesis of each article of the Draft Convention giving a complete picture of the preparatory process through which these articles had passed in the various meetings of the Working Group on the International Legislation on Shipping and at the ninth session of UNCITRAL.

The Draft Convention was considered by the Trade Law Sub-Committee, article by article, on the basis of the study presented by the Committee's Secretariat. The Sub-Committee found the Draft Convention "generally acceptable", but was of the opinion that careful consideration should be given at the Conference of Plenipotentiaries to the following points:

"(a) In relation to Article 1, paragraph 2, the possible addition of the word "subsequently" immediately before the last word of that paragraph.

(b) In relation to the opening words of Article 2, paragraph 1, whether it was intended that the Convention was to apply to a carriage of goods between a State and a dependent territory.

(c) In relation to Article 5, paragraph 4, the possibility of shifting the burden of proof from the claimant to the carrier, taking into account, however, the need to balance the interests of both parties in the context of the overall structure of the rules contained in Article 5, as well as the impact which the shifting of the burden may have on insurance costs.

(d) The possibility of harmonizing the drafting of Article 21, paragraph 1(d), and Article 22, paragraph 3(b). It was suggested that the word "any additional place" and the words "any place" in these provisions could be replaced by the words "any other place."

(e) In relation to the first sentence of Article 23, paragraph 1, whether the drafting could be improved if the following wording were adopted: "any stipulation in the contract of carriage, in a bill of lading, or in any other document evidencing..... ...".

The Sub-Committee was also of the view that the following provisions called for special consideration at the Conference of Plenipotentiaries:- Article 6; Article 17; Article 19(1); and Article 23(3).

The recommendations of the Sub-Committee, as set out above, were approved by the Committee in its plenary session held on 26 February 1977.

Doha Session (1978)

During the Doha Session (1978), the Trade Law Sub-Committee noted that the United Nations Conference on the Carriage of Goods by Sea would be held in Hamburg from 6 to 31 March 1978. In view of the importance of that Conference to the developing countries, both from a legal and an economic point of view, the Sub-Committee recommended that the Committee should urge the member governments to participate in the work of that Conference, and that attention of the member governments should be drawn to the views expressed by the Sub-Committee on the Draft Convention at the Baghdad Session. These recommendations were accepted by the plenary of the Committee on 23 January 1978. In pursuance of these recommendations, the views expressed by the Trade Law Sub-Committee at the Baghdad Session on the Draft Convention were