produce in respect of which the countries in the region were primarily exporters. The draft was submitted to Asian-African governments and trading organizations in the region and the suggestions received were incorporated in the draft. The draft was thereafter considered by the Standing Sub-Committee on International Trade Law Matters during the thirteenth session of the AALCC held in Lagos in 1972. The Sub-Committee drew up a report suggesting certain amendments to it.

On the same lines the Secretariat prepared the draft of a second model contract form together with general conditions of sale relating to the purchase of durable consumer goods and light machinery in respect of which most of the countries in Asia and Africa are mainly buyers.

The drafts prepared by the Secretariat were then considered by the Sub-Committee on International Trade Law Matters during the sixteenth session of the AALCC held in Teheran in 1975 and the drafts finalized at that session were :

(1) Standard Form of Contract on F.O.B. basis applicable in respect of certain types of agricultural produce and other commodities which are generally exported by countries in the Asian-African region;

(2) Standard Form of Contract on F.A.S. basis applicable to the commodities covered by the F.O.B. contract but which are of perishable nature;

(3) Standard Form of Contract on C.I.F. basis applicable to light machinery and durable consumer goods which are generally imported by the countries in the Asian-African region; and

(4) General Conditions of Sale on C.I.F. (Maritime) basis applicable to light machinery and durable consumer goods as an alternative to the corresponding standard contract.

The AALCC, however, decided to submit these drafts together with explanatory notes, to be prepared by the Secretariat, to the member governments, a few non-member governments and trading organisations in the region, U. N. organs and international organisations concerned with trade law for their comments. The AALCC also decided that these drafts should be submitted, together with the comments received, to a Special Meeting of Experts to be convened under the auspices of the AALCC during 1976. The comments received included those from the Commonwealth Secretariat and the Economic Commission for Europe which had constituted an informal group of experts to study the drafts finalised at Teheran.

Pursuant to the decision taken at the Teheran session, a Special Meeting of Experts was convened in Kuala Lumpur in July 1976 after the closure of the regular session. The Experts finalised the F.O.B. and F.A.S. contract forms but due to lack of time could not take up the C.I.F. contract and the corresponding General Conditions.

At the eighteenth session held in Baghdad in February 1977 the AALCC approved the F.O.B. and F.A.S. contract forms which had been finalised by the Meeting of Experts at Kuala Lumpur and directed that another meeting of experts be convened immediately after the nineteenth session to consider and finalise the drafts of the standard form of C.I.F. contract and the corresponding General Conditions applicable in respect of light machinery and durable consumer goods.

Pursuant to the decision taken at the Baghdad Session, a Special Meeting of Experts was convened in Doha from 24 to 26 January 1978 to consider and finalise the drafts of the C.I.F. (Maritime) Standard Contract and the corresponding General Conditions applicable to light machinery and durable consumer goods which had been approved by the Sub-Committee on International Trade Law Matters during the Teheran Session (1975). The Special Meeting was, however, unable to complete the consideration of the draft texts and decided to resume its consideration of those texts at its next meeting.

Seoul Session (1979)

In terms of the above decision, the Expert Group met in Seoul on 25 and 27 February 1979 in conjunction with the

twentieth regular session of the AALCC. Its meetings were chaired by Prof. Dr. Jisu Kim of the Republic of Korea, and Prof. Kazuaki Sono of Japan continued as the Rapporteur. In order to carry out its mandate expeditiously, the Expert Group decided to confine itself to an examination of the draft of a C.I.F. contract form prepared and presented by the Rapporteur. This draft not only reflected the conclusions reached at the Doha Meeting, but also contained provisions on certain new issues and suggestions for formalistic modifications to conform with the F.O.B. and F.A.S. standard contracts already finalized by the AALCC. After completing its examination of the Rapporteur's draft, the Expert Group unanimously adopted a final form of the "AALCC Standard Form of C.I.F. Contract and recommended this contract form for use in the Asian-African region for sales transactions in light machinery and durable consumer goods.

The C.I.F. Contract, as finalised by the Expert Group at Seoul, was placed before the Sub-Committee on International Trade Law Matters at its inter-sessional meeting held in Kuala Lumpur in July 1979 for formal adoption. The inter-sessional meeting also had before it certain proposals and comments relating to the C.I.F. contract presented by the Delegate of Pakistan. The Sub-Committee, however, could not address itself to these matters for lack of time.

Jakarta Session (1980)

During the twenty-first session of the AALCC held in Jakarta in April 1980, the Sub-Committee on International Trade Law Matters considered a proposal of Pakistan to amend Part II of the draft of the C.I.F. Standard contract form adopted by the Group of Experts at the twentieth session of the AALCC. After deliberation the Sub-Committee appointed a working group consisting of the representatives from Pakistan, the Arab Republic of Egypt, Japan, Singapore and Ghana to prepare a compromise draft. The recommendation of the Working Group was to replace Part II of the draft form by the following :

"PART II : LICENCES AND PERMITS

Alternative A

It shall be the duty of the seller to obtain at his expense any licence, permit or other authorisation required for the purpose of the sale or export in the country of exportation. The buyer shall obtain at his expense any such authorisation required for the purpose of purchase or import in the country of importation. Each party shall render at the other's request, risk and expense, every assistance which may be required to fulfil the other party's duty under this provision.

Alternative B

1. It shall be the duty of the seller to obtain at his expense any licence, permit or other authorisation required for the purpose of the sale or export in the country of exportation. The buyer shall obtain at his expense any such authorisation required for the purpose of purchase or import in the country of importation.

2. The seller shall obtain such authorisation by the..... (date) and the buyer by the.....(date). Such dates may be altered by mutual agreement. Each party shall render at the other's request, risk and expense, every assistance which may be required to fulfil the other party's duty under paragraph 1.

3. If either party, after using his best endeavours, fails to obtain aforementioned authorisation before the dates herein specified, or if obtained, it is subsequently withdrawn by the competent authorities through no fault of the party concerned, the contract shall automatically terminate. In that event neither party shall have any right of recourse against the other, provided that the party who fails to obtain such authorisation promptly informs the other party of such failure.

4. Where such authorisation is obtained for part of the contractual quantity only, the party so obtaining them shall

immediately notify the other party of the fact. In such notification a time-limit shall be fixed for acceptance of such partial quantity. If the party obtaining the authorisation as aforesaid does not give the notice required above, or the other party does not accept the partial quantity, the effect shall be the same as on a failure to obtain the authorisation by the party notifying as provided in paragraph 3."

After accepting the recommendation of the Working Group, the Sub-Committee adopted the C.I.F. Standard Contract Form as thus amended.

In response to another proposal of Pakistan, the Sub-Committee requested the Secretariat to prepare a draft of C&F Standard Contract form taking into account all the views expressed in the Sub-Committee and maintaining the basic approach as contained in the C.I.F. Standard Contract form for consideration at its next session.

Colombo Session (1981)

In pursuance of the directions of the Trade Law Sub-Committee the Secretariat drafted a standard form of C & F Contract intended to be applicable to sale transactions in light machinery and durable consumer goods which was examined by the Trade Law Sub-Committee during the twenty-second session of the AALCC held in Colombo (1981).

Discussions on the draft contract were concentrated principally on two issues, namely (i) whether the Sub-Committee should examine only the draft provisions on insurance or should review all the provisions; (ii) whether it should postpone consideration of the draft in view of the fact that recent changes in the field of international trade and transport law, in particular, the adoption of the U.N. Convention on Contracts for the International Sale of Goods in April 1980, which had achieved unification of a major area of international sale of goods, had not been reflected in the draft.

Those who favoured the adoption of the draft model contract with minor modifications as proposed by the Secretariat justified it on the ground that the C & F Contract permitting the buyer to provide for marine insurance on terms deemed appropriate by him would be beneficial, not only to the buyers but to the developing countries themselves in the context of the following considerations : (i) unreasonable rates of insurance premia demanded and unreasonable terms imposed by the insurance companies in the western world; (ii) savings of otherwise scarce foreign exchange reserves: and (iii) patronage being extended to national insurance companies. These representatives did not accept the proposition that the adoption of the Convention on Contracts for the International Sale of Goods which is likely to come into effect in the near future, had supplanted or obviated the need for model contract forms. According to them, the Convention had clearly recognized the supremacy of the contract terms agreed to by the parties over the Convention provisions and that the Convention would certainly not be applicable in respect of those States which did not accede to or ratify the Convention.

The representatives who advocated postponing considering of the draft contract justified it on the ground *inter alia* that the innovations and contributions in the field of international trade law made by the U.N. Convention on Contracts for the International Sale of Goods had not been reflected in the draft contract. The draft of the Convention had been comprehensively examined by the Sub-Committee at the Seoul Session (1979) and many of the recommendations by the Sub-Committee which were endorsed by the Plenary Committee, were duly taken account of at the Vienna Conference on the Intenational Sale of Goods.

In this context it was pointed out that some of the provisions of the draft contract had adopted a different approach as compared to the Convention, e.g. provisions relating to "exemptions" and "passing of risk." It was also suggested that the words "customs duties" be included in the text of paragraphs 1,2 and 3 of Part III of the draft contract in order to conform with the title.

At the end of the discussion, the Sub-Committee recommended that the Secretariat should carry out further

studies so as to reflect the current developments in the field of international trade and transport law in the draft contract and that the matter should be taken up at a future session of the AALCC.

The recommendations of the Trade Law Sub-Committee were endorsed by the Plenary Committee on 29th of May, 1981.

(II) INTERNATIONAL SALE OF GOODS

Introductory

The United Nations Commission on International Trade Law (UNCITRAL), at its first session held in 1968, included the subject of the International Sale of Goods as a priority item in its programme of work. The Commission also agreed to consider revision of the two Hague Conventions of 1964, namely the Hague Convention relating to Uniform Law on the International Sale of Goods (ULIS) and the Hague Convention on the Formation of Contracts in the International Sale of Goods (ULF), as falling within the scope of that subject. The drafts of these Conventions had been prepared by the International Institute for the Unification of Private Law (UNIDROIT). Although these Conventions had been adopted after a great deal of preparatory work, they did not attract wide acceptance, particularly among the Third World countries as they had taken no part in the conclusion of those Conventions. However, since the Conventions represented unification of a very wide area of the international sale of goods, the Commission decided to undertake revision of these Conventions to enhance their usefulness. Accordingly, the Commission at its second session held in 1969, established a Working Group and requested it to ascertain which modifications of these Conventions might render them capable of wider acceptance to countries of different legal, social and economic systems, and to elaborate, if necessary, new draft Convention/Conventions reflecting these modifications.

The Working Group devoted its first seven sessions, held between 1970 and 1976, to the revision of the ULIS and the

text of a Draft Convention formulated by it was adopted by the Commission at its tenth session (1977).

The Working Group devoted its eighth and ninth sessions, held in 1977, to the revision of the ULF and formulated a draft text of a Convention.

At the eleventh session held in 1978, the Commission, while considering the Draft Convention on Formation prepared by the Working Group, decided to integrate it with the Draft Convention on Sales, and a single text entitled "Draft Convention on Contracts for the International Sale of Goods" was adopted. It was on the basis of this text that a U.N. Conference held in Vienna in March-April 1980 adopted the text of the Convention on Contracts for the International Sale of Goods.

Work of the AALCC

At the Baghdad Session (February 1977), the Sub-Committee had recommended that the Draft Convention on the International Sale of Goods, which was then to be finalized by UNCITRAL at its tenth session (1977), will be a suitable item for consideration at its next session.

Pursuant to the above decision, the AALCC's Secretariat prepared a study on the Draft Convention on the International Sale of Goods adopted by UNCITRAL at its tenth session, with a view to assist the Trade Law Sub-Committee in its examination of the Draft Convention at the Doha Session of the AALCC. The study set forth the genesis of each article followed by a detailed analysis of its provisions. Also, wherever possible, a brief summary of the divergent views expressed in respect of any particular provision either in the meetings of the Working Group or at the tenth session of UNCITRAL was given in order to give a complete picture of the preparatory process through which these articles had passed.

During the Doha Session (1978), the Sub-Committee on International Trade Law Matters examined the Draft Convention article by article on the basis of the study prepared by

the AALCC's Secretariat. The Sub-Committee was, however, able to consider Articles 1 to 23 only and therefore decided to continue its consideration of the draft Convention at the next session of the AALCC and to concentrate its consideration on those articles on which Delegations would submit comments.

Seoul Session (1979)

Whilst the Draft Convention on the International Sale of Goods adopted by the Commission at its tenth session (1977) had been partly examined by the Trade Law Sub-Committee at the Doha Session (1978), the entire Draft Convention on Contracts for the International Sale of Goods, which had consolidated the rules on Formation and on Sales in a single text was examined by the Trade Law Sub-Committee during the Seoul Session (1979). After an article by article examination of the Draft Convention, the Sub-Committee took the view that although the Draft Convention taken as a whole was generally acceptable some of its provisions which affected the rights of the parties to a sale transaction ought to be reviewed having regard to the principles underlying the New International Economic Order. The comments and proposals made by the Trade Law Sub-Committee were as follows :

"(a) *Article 1, paragraph 1* : It should be specified that the requirement of having places of business in different States should obtain at the time of the conclusion of the contract and that the Convention would apply even if that requirement was no longer met when a dispute between a buyer and a seller actually arose.

(b) *Article 9 (Article 10 of the Convention)* : It was noted that, unlike the Convention on the Limitation Period in the International Sale of Goods adopted in 1974, the draft Convention did not set forth a definition of the term 'party'. The Sub-Committee was of the opinion that, in view of the participation of State agencies in international trade, the draft Convention should contain such a definition.

(c) *Articles 12 and 51 (Articles 14 and 55 of the Convention)*: The Sub-Committee noted that paragraph (1) of Article 12 provides that a proposal for concluding a contract is sufficiently definite so as to constitute an offer if, among other things, it expressly or implicitly fixes or makes provision for determining the price. On the other hand, Article 51, which deals with the calculation of the price, provides a means for determining the price when the contract does not state a price or does not expressly or implicitly make provision for its determination. The views expressed in the Sub-Committee were two-fold. Firstly, Articles 12 and 51 were in contradiction. Secondly, there was a strong current of opinion in the Sub-Committee that a contract of sale, in order to be capable of conclusion, should state the price or should itself expressly or implicitly make provision for its determination. According to this view, the provision in Article 51 that in the absence of a fixed or determinable price the contract price would be that generally charged by the seller at the time of the conclusion of the contract was not acceptable.

(d) *Article 28 (Article 30 of the Convention)* : The Article states, *inter alia* that the seller must "transfer the property in the goods as required by the contract and this Convention". It was noted that the draft Convention did not set forth any provision concerning the transfer of property. Accordingly, the article should be redrafted in such a way so as to impose an obligation on the seller to take such steps as are necessary to transfer the property in the goods.

(e) *Article 37 (Article 39 of the Convention)* : (1) The Sub-Committee was of the view that Article 37 was one of the key provisions of the draft Convention in that it affected the basic right of the buyer to avail himself of the remedies under the Convention (e.g. avoidance of the contract for fundamental breach, claim for damages, and reduction of the price) in case the goods did not conform to the contract. Two main observations were made. It was noted that Article 37, paragraph (1), stated that the buyer "loses the right" to rely on a lack of conformity if he did not give notice to the seller within a reasonable time. The view was expressed that

failure to give notice should not result in loss of the right but should give rise to damages which the buyer should pay to the seller in cases where he (the seller) suffered damages because of the failure of the buyer to give notice. Instead, the article should establish the presumption that if the seller did not receive, within a reasonable time", notice that the goods were defective, he was entitled to assume that the goods had been handed over to the buyer in conformity with the contract. In such a case, the burden of proof that the goods were delivered in a defective state should then fall on the buyer. In this connection, it was suggested that the revision of the rule could be inspired by a similar provision in the U.N. Convention on the Carriage of Goods by Sea adopted in Hamburg in 1978 (Article 19).

(2) The Sub-Committee was of the view that the termination of the right of the buyer to rely on lack of conformity as provided for in paragraph (2) of Article 37 was not acceptable in that the provision did not sufficiently protect the buyer's right to rely on latent defects which, particularly in the case of complicated machinery, could become evident only after a period of time had passed. The two-year time-limit was considered not to be sufficient, and the Committee therefore suggested that consideration be given at the Conference of Plenipotentiaries to the possibility of extending the period of two years to four years. In this connection, the Sub-Committee noted that under the Prescription Convention (Articles 8 and 10) the buyer must commence judicial proceedings against a seller within four years of the date on which the goods were actually handed over.

(f) *Articles 39(2) and 40(3) (Articles 41(2) and 42(3) of the Convention)*. The Sub-Committee was of the view that the same approach suggested under (e)(1) above should be adhered to with regard to the effect of the failure of the buyer to give notice under Articles 39 and 40.

(g) *Article 42 (Article 46 of the Convention)*. The Sub-Committee noted that this Article gave the buyer the right to require the seller to perform the contract as originally agreed.

The view was expressed that the Convention should grant the seller, in cases where subsequent performance by him would not constitute a serious inconvenience to the buyer, a right to remedy non-performance and that therefore the buyer should have the right to avoid the contract only after the seller did not perform the contract at the request of the buyer. It was noted in this respect that Article 45(2) enabled the buyer to recover any damages he may have suffered.

(h) *Article 44 (Article 48 of the Convention)*. The Sub-Committee was of the view that, although the right of the seller to cure failure to perform was, under the article, subject to certain restrictions, it should nevertheless be kept in mind that the right to cure was against the terms of the contract. Thus, if the seller delivered on 15 January instead of 1 January, the late delivery, though intended as a remedy of the failure to perform, did not cure his failure to deliver on 1 January. In view of this, the Sub-Committee was of the opinion that the provisions of paragraph (2) of this article, which penalized the buyer who did not comply with the seller's request within a reasonable time, was too harsh. Accordingly, this provision should be re-examined with a view to finding a rule that would take account of the legitimate interest of the buyer.

(i) *Article 61 (Article 65 of the Convention)*. The Sub-Committee noted that Article 61 was intended to apply in situations where the buyer, though obliged to do so under the contract, failed to specify the quality of the goods or some aspect thereof, on an agreed date. The Article gave the seller the right to provide, at his choice, the specification himself, and, if the buyer failed to react to the seller's specification, made such specification binding. The view was expressed that this approach was not reasonable and that in such situations the buyer should not be obliged to receive goods which were possibly of no use to him. It was argued that, instead the seller should have recourse to the rights available to him under the Convention where there was a breach of contract by the buyer.

(j) *Article 62 (Article 71 of the Convention)*. The Sub-Committee noted that under paragraph (1) of this article, a

party could suspend performance if after the conclusion of the contract serious deterioration of the party's ability to perform or in his creditworthiness gave good ground to conclude that the other party would not perform a substantial part of his obligations. The Sub-Committee was of the view that this paragraph placed too much trust in the ability of one party to judge the other party's ability to perform. It was the general view that, for the purposes of the suspension of performance, a more objective test was needed, for instance by using the test of insolvency. Moreover, the article did not specifically state whether a party who suspended his performance, but who could not substantiate this, was liable to the other party for any damage that the other party suffered.

(k) *Article 65 (Article 79 of the Convention).* (1) There was strong opposition in the Sub-Committee against the use in paragraph (1) of this article of the term "impediment beyond his control" in order to indicate a situation where a party is exempted from liability for a failure to perform because of *force majeure.* Though the Sub-Committee was aware of the different connotations which the term *force majeure* had in various legal systems, it was of the view that *force majeure* as a concept was so well known in international trade practices that the use of any other term might give rise to misunderstandings. Furthermore, it was not immediately clear what was implied by the notion of 'impediment'. For instance, did this notion include factors which were personal to a party such as illness, and was it possible to speak of an 'impediment' beyond the control of a party if the circumstances under which he originally concluded his contract had changed to his detriment ? The Sub-Committee agreed that the wording of this paragraph should be reconsidered.

(2) The view was expressed that paragraph (5) should state more clearly that the exemption from liability under this article prevented the other party from exercising only his right to claim damages but that all other rights were available under the Convention to the buyer or seller, such as avoidance of the contract, reduction of the price, or demand for performance.

(l) *Article 69(1) (Article 84 of the Convention).* The Sub-Committee noted that this article did not specify at which rate interest was to be paid by the seller who was under obligation to refund the price. One possibility would be to indicate that the rate of interest payable would be the rate current at the seller's place of business since the obligation to pay interest was part of the seller's obligation to make restitution.

The general observation was made that, under Islamic law, a party could not be requested to pay interest. Therefore, a party of the Islamic faith would be obliged to make use of the faculty under Article 5 of the Convention, namely to "derogate from or vary the effect of any of its provisions". Alternatively, interest could be reflected in certain 'charges'.

(m) *Article 70-72 (Articles 74 to 76 of the Convention)* : It was noted that Articles 70, 71 and 72 provided the means of calculating damages in certain cases. The suggestion was made that these articles should set forth a special provision for the case where a party suffered damage because of non-performance by another party of a monetary obligation under the contract. In such a case damages should be limited to the payment of interest by the party in breach and should not extend to such additional damages as he might actually have suffered. It was further noted that the notion of foreseeability was difficult to apply in practice and that not all legal systems recognized this principle. Moreover, in some legal systems which did recognize the principle of the limitation of damages to those which were foreseeable, the principle was not applicable if non-performance was due to the fraud of the non-performing party. Accordingly, the Sub-Committee was of the opinion that Article 70 should be reconsidered at the Conference of Plenipotentiaries.

(n) *Article 79(1) (Article 67 of the Convention)* : Article 79 contains a rule regarding the passage of risk where the contract involves the carriage of goods and where the parties have not provided in their contract a different rule in respect of risk. In such a case, the rule is that if the contract provides

for carriage from the seller's place of business but does not require the seller to hand them over to the buyer or to the carrier at any place other than the place at which carriage begins "the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer". The Sub-Committee was of the view that this rule could give rise to different interpretations, particularly in cases where the seller must arrange for carriage to a port from which the goods were to go by ship. It was suggested in this connection that the insertion of the words "in accordance with the contract" might possibly facilitate interpretation of the article.

(o) *Article 80 (Article 68 of the Convention)* The Sub-Committee noted that the purpose of this article was to determine at what point of time the risk passed in respect of goods sold in transit. Under Article 80, the risk passed retroactively at the time when the goods were handed over to the carrier who issued the document controlling their disposition. There was strong support for the view that a rule under which the risk of loss passed prior to the making of the contract was unacceptable. Thus, it was difficult to comprehend why a buyer of goods in transit that had been damaged before the conclusion of the contract should bear the risk. Accordingly, the Sub-Committee strongly suggested that the rule should be modified to the effect that the risk of loss would be deemed to have passed at the time the contract was concluded.

Finally, the Sub-Committee, having completed its consideration of the Draft Convention on Contracts for the International Sale of Goods, was of the general view that the draft Convention, intended as it was for the International Sale of Goods, would be of easier and more predictable interpretation if certain issues at present left to the subjective assessment of a party would instead be governed by more objective criteria. Thus, the use of terms such as 'reasonableness', 'good grounds', 'substantially', 'ought to have known' or 'foreseeable' might well give rise to subjective interpretations by a party of his rights, and thereby lead to unnecessary controversies and litigation between the parties. Therefore, the

Sub-Committee strongly recommended that the Conference of Plenipotentiaries pay special attention to these matters.

(III) INTERNATIONAL COMMERCIAL ARBITRATION

Introductory

The AALCC during its thirteenth session held in Lagos (1973) proposed that apart from following up the work of UNCITRAL in the field of International Commercial Arbitration, it should make an independent study of some of the more important practical problems relating to the subject from the point of view of the Asian-African region. The AALCC Secretariat thereupon conducted an extensive survey with regard to current arbitration law and practice and based on this survey prepared a detailed and comprehensive study covering the following topics : (i) Institutional arbitration and *ad hoc* arbitration; (ii) Constituting the arbitral tribunal; (iii) Venue of arbitration; (iv) The applicable law; (v) Procedure in arbitration; (vi) Arbitral awards; and (vii) The enforcement of foreign arbitral awards.

The Secretariat's study was considered by the Trade Law Sub-Committee during the Tokyo Session (1974) of the AALCC and certain preliminary comments were made on the topics covered by the study. The AALCC decided that the Secretariat should prepare a revised study on the same topics to enable the Trade Law Sub-Committee during one of its future sessions to formulate principles or model rules for consideration of member governments with a view to their incorporation in the municipal laws or adoption of a regional convention.

The Secretariat prepared a revised study for consideration of the Trade Law Sub-Committee during the Kuala Lumpur Session (1976). The study suggested the following questions of practical value for consideration of the Trade Law Sub-Committee :

(1) Promotion of arbitral institutions or centres in the Asian-African region—inter-institutional co-operation,

the types of disputes where institutional arbitration might be resorted to and disputes where *ad hoc* arbitration would be preferable.

(2) Considering that in institutional arbitration the proceedings are to be governed by the rules adopted by the arbitral institutions, what practical measures might be adopted to ensure that the rules of the institutions concerned conform to the minimum safeguards which are necessary to protect the interests of developing countries and their nationals.

(3) Formulation of principles concerning the constitution of arbitral tribunals, venue of arbitration, the applicable law governing the rights and obligations of the parties, procedure in arbitration and the award for possible incorporation in municipal laws or model rules.

(4) Examination of the UNCITRAL model rules for optional use in *ad hoc* arbitration and other model rules.

(5) Considering that the municipal laws of various countries have direct impact on arbitration proceedings which may be at variance, what suitable means could be adopted to bring about a certain degree of uniformity in the matter of arbitration proceedings—possibility of adoption of a regional convention.

(6) Enforcement of foreign arbitral awards—consideration of the provisions of the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The points raised in the Secretariat's study were discussed by the Trade Law Sub-Committee during the Kuala Lumpur Session (1976) and based on the recommendations of the Trade Law Sub-Committee, the AALCC 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 U.N. Convention on Recognition and Enforcement of Foreign Arbitral Awards to consider the possibility of ratification of or accession to the Convention.

2. *Commends* the United Nations Commission on International Trade Law for the successful 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 Foreign Arbitral Awards with a view to clarifying, *inter alia*, the 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 resolution was transmitted to the UNCITRAL Secretariat.