JURISDICTIONAL IMMUNITY OF STATES

Introduction

At the Tokyo Session of the Committee in May 1983, one of the matters that was decided to be taken up at the meeting of the Legal Advisers of the Member States of the AALCC was the question concerning the practical implication of the restrictive manner in which the principle of sovereign immunity was being applied in certain countries as this had been causing a good deal of concern to the developing countries of the region. The main focus of attention in this connection was the United States Foreign Sovereign Immunities Act of 1976 and more particularly the way in which the provisions of that legislation was being interpreted and applied by the American Courts. This was in view of the fact that the governments in many developing countries found themselves engaging in activities which in some way or other attracted the long arm jurisdiction of the United States Courts under the aforesaid legislation on the basis of some kind of nexus even though somewhat remote at times. A good deal of concern was expressed in this connection about the manner in which the jurisdiction of the courts in the United States was sought to be invoked in the case of *Verlinden* Vs *Central Bank of Nigeria* in respect of a dispute concerning sale of cement by a Dutch company to the Nigerian Government which had no connection with the United States except that the bank guarantee was opened by the Central Bank of Nigeria through the Morgan Guarantee Trust Company in New York. The judgement of the United States Supreme Court in that case was delivered soon after the Tokyo Session on 23 May 1983, which affirmed the validity of the legislation on the jurisdiction of the United States Courts in regard to suits even by foreign plaintiff. This decision was referred to at the Meeting of the Legal Advisers held in New York in November 1983 as also a number of decisions where the actions were said to be "causing direct effect in the United States" within the meaning of the 1976 Legislation.

At the Meeting of the Legal Advisers, views were expressed that in the light of the divergence of State practice, and the growing trend towards enactment of national legislations in certain countries restricting State immunity, it was desirable that the law on the subject should be authoritatively settled through the work of the International

Law Commission in order to achieve a uniform approach towards application of sovereign immunity. The general consensus that emerged out of the discussions were as follows:-

i) The principle of reciprocity might appropriately be the governing factor in the matter of application of jurisdictional immunity and the International Law Commission might be requested to consider incorporating a provision to that effect in the draft articles.

ii) The Secretariat of the AALCC should endeavour to monitor the future application and interpretation of the United States Sovereign Immunities Act through appropriate means and, in this connection, it was felt that requests may also be made to Member Governments to communicate to the Secretariat such information as they may have or may obtain through their Diplomatic Missions in Washington.

iii) Whilst expressing its concern about the recent application of the US legislation the Meeting was of the view that the AALCC would be in a better position to examine and comment upon that legislation as also to advise on possible reciprocal legislation in Member States after the International Law Commission had made some further progress on its work on jurisdictional immunities. It was accordingly agreed that the matter be placed before the Committee at one of its regular sessions with a view to making of appropriate recommendations soon after the Commission had adopted provisionally the draft articles on the subject. It was also felt that the Secretariat in the meantime may consult with and obtain information on the recent trends in countries of other regions.

iv) Member Governments might consider the possibility of incorporating arbitration clauses in their contracts such as those under the ICSID Convention so as to preclude exercise of jurisdiction by the national courts.

v) The AALCC Secretariat should render advice to Member Governments upon request regarding modalities to be adopted in individual cases such as possible approach to the Department of Justice through the State Department for filing of suggestions or for facilitating representation before the Courts.

The Report of the Legal Advisers was placed before the Committee at

its Kathmandu Session in 1985. The Committee, whilst taking note of the recommendations held a general debate on the topic of sovereign immunity and the work of the International Law Commission with the participation of ILC's Special Rapporteur Dr. Sompong Sucharitkul. The Committee also discussed the scope and effect of the United States Legislation of 1976 and the United Kingdom State Immunity Act, 1978 which had many similar provisions as in the United States legislation. At the conclusion of the debate it was decided that the topic should be taken up as a substantive item for consideration of the Committee at its Twenty-fifth Session. The Secretariat accordingly prepared a comprehensive study setting forth the law and practice in respect to immunitly of States in various regions of the world. Extensive discussion took place on the basis of that study at the Twenty-fifth Session held in Arusha in 1986. In the course of the general debate, the Observer for Australia stated that the Foreign States Immunities Act 1985, enacted by the Australian Parliament, whilst following the general international trend by adopting the restrictive doctrine introduced some innovations. The structure of the Act while providing that a foreign State would be immune from the jurisdiction of an Australian Court, enumerated specific exceptions from the rule of general immunities. Such exceptions included, *inter alia*, proceedings concerning a commercial transaction; proceedings concerning a tort committed in Australia, and proceedings concerning employment contracts relating to foreign embassies and consular missions covered by the Vienna Conventions, he added. Turning to the question of immunity from execution, he stated that the Act stipulated that the property of a State would not be subject to any process or order of the Courts for the satisfaction or enforcement of the judgement and that this immunity, however, would not apply to commercial property. He said that the Act also provided for service of process which had to be through the diplomatic channel or in accordance with the agreement with the foreign State concerned.

One delegation referred to the American action of freezing his Government's assets. He said that the US action was contrary to and violative of Article VI of the Articles of Agreement of the International Monetary Fund and that the American Act of 1976 which allowed the freezing and confiscation of assets of other States violated the concept of jurisdictional immunities of States.

The Observer for UNIDROIT said that the expansion of the activities of States into the economic area demonstrated why the long standing concept of absolute immunity of States had been surpassed in the main industrialised countries by the prevailing concept of limited immunity. He observed that limited immunity is a simple criterion or general

principle that acquires a concrete quality only when the legal relationship in respect of which State cannot claim immunity from the local jurisdiction has been identified.

Another delegate was of the view that the principle of State jurisdictional immunity was a substantive norm of international law and the exercise of compulsory jurisdiction by the Courts of any country over a foreign sovereign State was violative both of the sovereignty of that latter State and the norms of the contemporary international relations. He emphasized that his government neither recognized such jurisdiction nor did the Courts in his country hear cases against other foreign sovereign States. He said that his government draws a distinction between sovereign acts of State owned enterprises or other economic entities. As regards civil law suits arising from commercial activities of State owned enterprises or companies in their capacity as independent legal persons, the delegate said that his governement was in principle not in favour of their enjoying immunity from the jurisdiction of a competent foreign Court.

One delegate addressing himself to the recommendations of the Legal Advisers meeting said that the first recommendation viz. the presentation of an *aide memoire* to the State Department of the US was a weak step and could not be effective. He was of the view that the second recommendation viz, the incorporation of arbitration clauses in contracts, too would not yield appropriate results. He pointed out that such a clause would not always ensure that the Department of Justice would file a suggestion in the court, or that the court refuse the assumption of Jurisdiction or that the courts would always accept the suggestion, if any, of the Department of Justice. Referring to the difficulties and obstacles surrounding the other recommendations, he was of the view that the best suggestion enumerated in the Secretariat study was the constitution of a panel of experts. He was of the view that the experts must be drawn from independent developing countries and should work out a decisive stand.

Another delegate referred to the existence of two schools of thought concerning the question of immunity besed upon the distinction between *ex jure gestionis* and *jure gestionis* he pointed out that views differed on what exactly constitutes the concept of *ex jure gestionis* i.e. of commercial non-sovereign or less essential activity. He was of the view that while it was no longer tenable to hold to sovereign immunity in regared to activities which were of a purely commercial nature and the doctrine of restrictive immuniy should not be applied in a manner encroaching upon the jurisdiction of other States. He felt that whereas it was easy to register a trend towards the restrictive principle of

immunity, it was as yet difficult to agree on a principle which would satisfy the criteria of uniformity and consistency required for the crystallization of a rule of customary international law.

One delegation felt that US Foreign Immunities Act had, *inter alia*, violated the Charter of the United Nations and the long arm jurisdiction of the US Courts reached everyone and affected the political and economic independence of all peoples and States.

The Secretary General in his concluding remarks stated that the Secretariat study on the Jurisdictional Immunities of States would be elaborated in the light of the views expressed by various delegations and the topic would be taken up as a priority item at the twenty-sixth Session of the Committee.

XI. THE CONCEPT OF PEACE ZONE IN INTERNATIONAL LAW AND ITS FRAMEWORK

THE CONCEPT OF PEACE ZONE IN INTERNATIONAL LAW AND ITS FRAMEWORK

Introduction

His Majesty's Government of Nepal by a reference made under Article 3(b) of the Statutes* had requested the Committee to undertake a study on "The Concept of Peace Zone in International Law and its Framework." In response to that request the Secretariat prepared a study which, while tracing the development of the concept of peace zone, pointed out that the peace zone as a concept as such did not appear to find specific mention in any treaties on international law as they basically reflected the traditional norms and practices that were developed and recognized among the European nations through the middle ages and until the early years of the present century. The law of nations did recognise war as a means for settlement of conflicts and developed norms and rules for regulating warfare. The law equally recognised the right of a State to "neutrality and also the concept of a "neutralised State" upon a collective guarantee, either by treaty or a declaration. Ano her concept, which international law recognised in the context of warfare, was "demilitarisation", namely, an agreement between two or more States which restricted establishment of military installations or stationing of troops in a particular zone or zones with a view to deescalate war and promote conditions for peace. The Charter of the United Nations had brought about a new dimension in the future growth and development of international law on an universal basis centered around the key-stone that war was outlawed as a legitimate means for settling disputes and reiterating the concept of collective security that had earlier found expression in the Covenant of the League of Nations. In the context of the Charter, maintenance of peace and security and promotion of friendly relations among nations had become the prime objective of international relations to be fostered and strengthened through progressive development of legal principles suited to the purpose. It was, therefore, not surprising that a trend in favour of bilateral treaties of peace and friendship gained wider acceptance during the fifties. The theme of peaceful co-existence and development of friendly relations came to be widely accepted in the wake of the cold war, the more notable among them being the *Panch*

* Article 4(c) of the Revised Statutes

Shila, The Bandung Declaration, the Movement for Non-alignment and the principles adopted by the United Nations Special Committee on Friendly Relations. The concepts such as "Zone of Peace", "Nuclear Free Zone" and "demilitarisation" could be said to have emerged in this context.

The ASEAN foreign ministers in their Kuala Lumpur Declaration, adopted on the 27th November 1971, had described South-East Asia as a "zone of peace, freedom and neutrality". Also in that same year, a proposal was brought before the United Nations for Declaration of the Indian Ocean as a zone of peace. Further, in a speech on the occasion of his coronation in 1975, His Majesty the King Birendra of Nepal had proposed that his country be declared as a zone of peace.

Against this background, the Secretariat study examined the extent to which the principles underlying the traditional concepts like "neutrality" or "neutralised States" could be applied to the concept of a "peace zone". Furthermore, the applicability of the various declarations, concepts and norms that have emerged since the second world war as also the extent to which new principles would need to be developed and incorporated as part of international law were also considered relevant in the framework of the Secretariat Study.

In accordance with the Committee's normal practice, the item was accordingly placed for preliminary discussion at the Committee's Kathmandu Session.

In the course of the discussions, the delegate of Nepal, in his detailed statement, elaborated the intent of his government's proposal to declare Nepal as a zone of peace. It was explained that while the customary principles and practices such as neutrality, neutralized zones etc., were relatable wholly to belligerency, acts of war and the right of a State to remain aloof in such conflicts, the concepts of peace zone derived its source of origin from the concept of peace as initiated by the Charter of the United Nations and developed through such international endeavours as the Bandung Declaration, the 1970 Declaration on Friendly Relations and Co-operation Among States and the Non-aligned Movement. While referring to the UN Resolution declaring Indian Ocean as a Zone of Peace* it was stressed that through that resolution the UN had accepted the concept as a legally valid principle of international law and if the concept was valid in respect of a region or sub-region, it could be equally valid to declare the territory of a single state as a zone of peace.

*U.N. General Assembly Resolution adopted on 16 December 1971.

It was recognised that the concept of zone of peace involved not only the obligations to be undertaken by the States which wished to declare its territory as such but also reciprocal obligations on the part of other States to respect the Status of the Zone of Peace. Nepal, on its part agreed to undertake following obligations:

1. It would adhere to the policy of peace, non-alignment and peaceful co-existence and would constantly endeavour to develop friendly relations with all countries of the world, regardless of their social and political system, and particularly with its neighbours, on the basis of equality and respect for each other's independence and sovereignty.

2. It would not resort to the threat or use of force in any way which might endanger the peace and security of other countries.

3. It would seek peaceful settlement of all disputes between it and other State or States.

4. It would not interfere in the internal affairs of other States.

5. It would not permit any activities on its soil that were hostile to other States supporting its proposal and in reciprocity, States, supporting its proposal could not permit any activity hostile to Nepal.

6. It would continue to honour the obligations under all the existing treaties which it had concluded with other countries as long as they remained valid.

7. It would not enter into military alliance nor would it allow the establishment of any foreign military base on its soil. In reciprocity, other countries supporting its proposal would not allow establishment of military base on their soil directed against Nepal.

As regards the views of other delegations, there were at least three different shades of opinions. Some delegations while generally endorsing the validity of the concept of peace zone stated that Nepal's proposal conformed to the basic principles of international law. Another view was that the peace zone concept was not at the time being crystallized, it was probably because it could have different contents in different parts of the World and it was upto the interested countries in each case to define that content. Accordingly, there might be different types of peace zone and instead of defining a peace zone either in abstract or in general, it would be more practical to identify the main

possible features of peace zones to be established on a case by case basis.

Yet another view, held by India, however, was that the concept of Peace Zone was a new idea in international law without any precedent. It was stated that although several proposals have been made for declaring certain regions and sub-regions as zones of peace, there were only two relevant precedents. The first was the Kuala Lumpur Declaration of 1971, which basically was a political declaration emanating from a political conference. The second example was concerning the Declaration on the Indian Ocean as a Zone of Peace. Both the Declarations were adopted in the context of big power rivalry and were aimed at preventing escalation, expansion and removal of military presence of big powers from a region or sub-region. Furthermore, encouraging the fragmentation of the search for peace, when the Charter of the United Nations itself stressed on collective efforts for peace, could lead to a situation where individual countries, within the limited option of their own specific interest begin to unilaterally propose themselves as Zones of Peace resulting in as many zones as there were members of the United Nations. It was stressed that if the concept of zone of peace was to be developed along healthy lines and aimed at greater acceptability, it was essential that the basic features of the proposal to declare the Indian Ocean as a Zone of Peace should broadly guide any proposal of this kind. It would be advisable not to radically depart from the framework and thrust of the Indian Ocean proposal because that was made after considerable prior consultation and understanding amongst those most interested in it and those who would be its biggest beneficiaries.

At the Arusha Session, there was a brief discussion on this topic. The delegate of Nepal streassed that it was not correct to say that his country's proposal was somehow against the idea of the Indian Ocean as a zone of peace and that it would be a fragmentation of the proposal of the Indian Ocean as a Zone of Peace. He did not accept that Nepal's proposal was in any way against the established norms of international law or that it went against the principles of Non-alignment and the Bandung Declaration. While rejecting the argument that a single country zone of peace would fragment the zone of peace concept over a larger area, he asked whether on the same ground it could not be argued that Indian Ocean as Zone of Peace concept would fragment and distort the concept of world peace. The delegate of India reiterated his government's point of view in this respect.

It was decided that any further discussion on this topic would be held in a working group which would be constituted at the Twenty-sixth session of the Committee. The Working Group might consider the contents and implication of various proposals on the establishment of Peace Zone made within and outside the United Nations.

ORGANISATION OF LEGAL ADVISORY SERVICES ON INTERNATIONAL LAW

Introduction

At the Karachi Session of the AALCC held in January 1969, it was decided that the Committee should consider the question of organization of Legal Advisory Services on International Law at one of its subsequent sessions. The idea underlying the decision was that an exchange of views and information on this matter would be useful and would enable the Asian-African Governments to benefit from each others experience in the field. The subject was generally discussed in the Plenary at the Committee's New Delhi Session held in January 1973 and a decision was taken at that Session for holding of periodic meetings of Legal Advisers of the Member States under the auspices of the Committee in order to promote a free and frank exchange of views on professional, organisational and technical aspects of the system of Legal Advisory Services on International law followed by Member Governments of the Committee. A two-day Meeting of Legal Advisers was accordingly held in January 1978 immediately after the Committee's Doha Session which was followed by another meeting of Legal Advisers in February 1979 during the Seoul Session.

Subsequently, another Meeting of Legal Advisers was held in New York in November 1983 during the Thirty-eight session of the General Assembly.

The topics for discussion intended to be taken up at the New York Meeting were the following:-

I. ORGANIZATIONAL PATTERN:

Relative merits of the systems obtaining at present in various countries:

a) As part of the General Legal Services of the Government;

b) As part of the Regular Foreign Service;

c) As a specialist division in the Foreign Office;

d) Creation of a small section in the Foreign Office whilst vesting

the ultimate responsibility for legal advising on international legal questions in the Attorney-General's Department.

II. NATURE OF WORK IN THE INTERNATIONAL LAW DIVISION

a) Advisory work on international law problems, method of seeking advice and the stage at which advice is generally sought; weight attached to such advice;

b) Treaty-making, drafts interpretation and implementation-stage at which legal advisers are generally associated with the negotiations and drafting of treaties; implementation of treaties through domestic legislation;

c) Preparation of full powers and other instruments;

d) Preparation for court cases involving international law questions; International Court of Justice, International Arbitral Tribunals; Tribunals or Committees constituted by International Organisations; National courts and tribunals; Issue of Certificates on International Law questions;

e) Codification and development of internationl law and Trade Law-Preparation for International Conferences dealing with international legal questions; Sixth Committee of the U.N. General Assembly; International Law Commission; UNCITRAL and UNCTAD; Other international and regional organisations engaged in the field.

III. ROLE OF LEGAL ADVISERS IN POLICY MAKING

Status and independence; Association of the Legal Advisers in formulation and execution of foreign policy.

IV. RECRUITMENT AND TRAINING OF PERSONNEL FOR THE INTERNATIONAL LAW ADVISORY SERVICES, CONDITIONS OF SERVICE

Methods of recruitment; academic qualifications and experience; Basic training; Conditions of service.

V. RELATIONSHIP OF THE LEGAL DIVISION WITH THE VARIOUS GOVERNMENT DEPARTMENTS

VI. ADVISE FROM OUTSIDE SOURCES

Seeking advice from University Professors and eminent lawyers; weight of their advice; their inclusion in Government delegations to international conferences.

VII. LIBRARY FACILITIES

The need for a good library; indexing of back papers; Development of a technique for maintenance of treaty records.

Due to the lack of time, the Legal Advisers were, able to discuss only the first topic, namely, the organisational pattern of legal advisory services. The Meeting took note of the fact that two previous Meetings of Legal Advisers held in 1978 and 1979, had examined in some detail the organisational pattern of legal advisory services obtaining in Member States. The Chairman summed up the discussions at the New York Meeting as follows:

"Every country will adopt the system of legal advisory services in the light of its tradition, experience and needs. Where a system has already been established, it may not be possible, even though desirable, to make substantial changes therein. However, exchange of views concerning the working of the system in different countries may give examples of problems faced and solutions found by them and this may be helpful to them in reviewing or modifying their own system.

Where such systems have not yet been established, the exchange of views which has been held may be found very useful in establishing a system which meets with their needs and requirements.

In many cases, the important elements which should be highlighted and emphasised in establishing or modifying the system of legal advisory services may be the following:-

i) The legal advisory services should be system-oriented rather than be individual-oriented so that, whereas individual officers may come and go, a reliable legal advisory service system will remain available to the country concerned.

ii) The system should ensure continuity. Transfers from the division or department for assignments in unrelated fields such as diplomatic positions should be the minimum.

iii) The system should give due place to the acquisition of

specialised knowledge not only about traditional international law but also about the newer fields of international law, such as the Law of the Sea, Law of Outer Space, Trade Law, International Economic Relations Law, and so forth. Skills should also be developed in the field of comparative legislation and the unification of law, particularly in the commercial and economic field.

iv) The system should devote special attention to the building up of adequate legal materials as well as to giving their officers requisite field experience in newer fields of international law by associating them in bilateral negotiations and promoting their participation in international conferences.

v) A system of co-ordinated advice should be promoted. Thus, proper procedural and other device should be developed which harmonize the questions of international law with the questions of constitutional or internal law, and deal properly with mixed questions of law and the law in commercial, industrial and economic fields, where skills are developed in Ministries of Justice and the Attorney General's office.

vi) Legal advisers must remain in close touch with foreign service officers and should have a good grip of elements of diplomacy and international relations.

vii) Members of the Legal Advisory Service should be ensured reasonable non-discriminatory Career prospects."

It was felt that these conclusions were extremely useful and might well constitute the subject matter of recommendations by the AALCC to its Member States. It was accordingly decided that the matter should be brought up before the Twenty fourth session of the Committee with a view to further consideration. The Meeting also recommended that the remaining matters on this topic should be discussed at the next meeting of the legal advisers.

The Report of the Meeting on the first topic was placed before the Committee at the Kathmandu Session. The Committee approved the Report and asked the Secretariat to transmit the same to all Member States.

XIII. ECONOMIC AND INTERNATIONAL TRADE LAW MATTERS

ECONOMIC AND INTERNATIONAL TRADE LAW MATTERS

It has been the practice in the Committee to take up the international trade law matters in the Standing Sub-Committee established since the Accra Session held in 1970. The Sub-Committee which normally meets five to six times during the session, subsequently submits its report to the Plenary for final adoption. During the Tokyo, Kathmandu and Arusha Sessions, the Committee continued this practice. A brief review of the work of the Trade Law Sub-Committee during the three sessions is as follows:

Tokyo Session

At the Tokyo Session, the discussion on trade law matters was concentrated on the work of UNCITRAL, including the consideration of the draft Convention on International Bills of Exchange and International Promissory Notes as proposed by Working Group on International Negotiable Instruments. The Sub-Committee generally reviewed the progress of work in UNCITRAL on the subjects of liquidated damages and penalty clauses, electronic funds transfer and international commercial arbitration. On the question of liquidated damages and penalty clauses, the main issue for consideration was whether the law relating to that matter should be formulated in the form of a Convention or in the form of a Model Law. The participants had different views. A large number of them favoured a Convention, whereas some of them favoured a Model Law. One of the representatives preferred a Model Law against a Convention on the ground that a high cost was involved in adopting a Convention whose subject matter was rather limited and, also, some members of the AALCC itself had supported the idea of Model Law on the subject. In contrast, the representatives who favoured a Convention pleaded that the question whether there should be a Convention or a Model law should not be decided on the basis of involvement of high cost. However, they felt that the problem of high cost involved in convoking a meeting of plenipotentiaries for the adoption of the Convention might be resolved through adoption of such a Convention by a resolution of the General Assembly.

On the subject of electronic funds transfer, one of the representatives expressed the view that this subject was of growing importance. He emphasised that the countries of Asia and Africa should have more interest in the study of this subject. The necessity of preparing a legal guide on electronic funds transfer was also stressed.

On the subject of international commercial arbitration, special mention was made of the uniform rules adopted by UNCITRAL and regional centres for arbitration established by the AALCC. One of the representatives felt the desirability of having a uniform arbitration law in addition to the uniform arbitration rules. Another representative suggested that the AALCC Secretariat should prepare its own commentaries on the clauses of the Model Arbitration Law as prepared by UNCITRAL and should suggest what was in the best interest of the Member States.

The Draft Convention on International Bills of Exchange and International Promissory Notes

The Sub-Committee examined the issues involved in the Draft Convention on International Bills of Exchange and International Promissory Notes. The views expressed by the representatives were as follows:

Definition of "Money" or "Currency" (Articles 1(2) (b) & (3) (b), 4 (11) & 6)

One of the representatives expressed the view that there should be a distinction between two situations. First, in order to meet a situation where instruments are drawn in SDRs but are to be paid in a specific domestic currency, there was a need for incorporating this possibility into the Convention. Also, the Convention should take care of a situation where instruments are drawn in SDRs and are to be paid in SDRs as well. In his view, further study was needed especially in the latter situation.

Completion of an Incomplete Instrument (Article II)

One representative expressed the view that the existing text in the Draft Convention should be retained, since that appeared to be a fair solution as to the question who should bear the loss arising out of the observance of the original agreement.

Forged Endorsements (Article 23)

It was the view of one of the representatives that the existing text be acceptable, since he considered it a good compromise. Nevertheless, he suggested that this text could provide, as in Articles 41(2) and 64, that the damages that the person to whom the instrument was directly transferred by the forger has to pay should be limited to the amount referred to in Article 66 or 67.

Shelter Rule (Article 27)

That the existing text should be retained was the view of one of the representatives and this view was generally accepted by members of the Sub-Committee.

Protected Holder (Article 28)

The existing text was considered satisfactory by one of the representatives. But he suggested that the requirement of regularity in Article 4(7) should be deleted since it was a vague concept which is not accepted in the present UCC.

Material Alteration (Article 31)

This position was generally acceptable but a decision to delete this provision was said to be another solution of resolving this problem.

Drawer's Power to Limit or Exclude His Liability (Article 34(2))

Supporting the existing text, one of the representatives expressed the view that even to the civil law countries this text is acceptable.

Incomplete Instruments (Article 38 (1))

This provision was considered necessary and it was felt that some sort of rule should be provided in case of the guarantor.

Qualified Acceptance (Article 39 (2))

One representative emphasised that there was a clear distinction in the text between the qualified acceptance in which the holder has no option and the partial acceptance. This solution was generally acceptable.

The Guarantor (Article 42 (5))

This solution was preferred because another solution which provided that in the case of a bill the person for whom he has become guarantor is the drawer before acceptance, the holder would be at a loss because he usually does not know when the guarantor made the guarantee, and hence it would lead to practical problems of verification.

Domiciled Bills (Article 45 (2) (c))

One of the representatives expressed the view that the text was acceptable to him, although it might give rise to difficulties to commercial practices of ULB countries. No contrary view was expressed.

Excuse for Delay in Presentment for Acceptance (Article 48)

According to Article 48(b), presentment for acceptance is dispensed with. Therefore, the holder in this case is allowed to take recourse action immediately. This solution was considered preferable.

Guarantor of the Drawee (Article 53 (3))

Considering the nature of the International Bills of Exchange, one reperesentative felt that it would be a good idea to have a guarantor who has primary obligation on the instrument.

Instruments payable in a Currency other than that of a place of Payment (Articles 71 & 72)

One of the representatives considered the text acceptable and noted that damages from loss caused for the holder was recoverable in accordance with Article 71 (3).

On the issue whether there should be two separate Conventions on the International Bills of Exchange and International Promissory Notes on the one hand and International Cheques on the other, one representative expressed the view that two separate Conventions might be preferable. He supported his view on the ground that one Convention which covers everything will have too many provisions and will be complicated. This view was supported by several delegations.

(II) Kathmandu Session

The Sub-Committee on International Trade Law matters, during the Kathmandu Session while mainly focussing its deliberations on UNCITRAL's Model Law on International Commercial Arbitration, also generally reviewed the progress concerning the Draft Convention on International Bills of Exchange and International Promissory Notes and UNCITRAL's work relating to New International Economic Order (NIEO).