Intellectual Property Organization (WIPQ). Developed countries, on the other hand, interpreted the Punta del Este Declaration as allowing for the elaboration of new substantive rules of international intellectual property law.

(ii) The Agreement on TRIPS

The Agreement on TRIPS recognizes that, in order to reduce distortions and impediments to international trade, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to international trade, new rules and disciplines are needed. To this end, the Agreement addresses the applicability of the basic principles of GATT and those relevant to intellectual property rights, the provision of effective enforcement measures for those rights, multilateral disputes settlement, and transitional arrangements.

The Agreement establishes minimum universal standards on patents, copyrights, trademarks, industrial designs, geographycal indications, integrated circuits and undisclosed information. The Agreement introduces, in addition to the well-established principle of national treatment, that of "most favoured-nation" treatment, a novelty in international IPR regimes, whereby any advantage a member grants to the nationals of any other country must be extended immediately and unconditionally to the nationals of all other members. The basic principles, it is noted, refer to criteria and objectives of special interest to developing countries, namely the contribution that the protection and enforcement of intellectual property rights should make to the promotion of technological innovation and to the transfer and dissemination of technology, and the measures that countries may adopt to protect public health and nutrition and to promote public interest in sectors of vital importance to their socio-economic and technological development.

Patents protection, as provided in Article 27:1 of the Agreement, will be available for any inventions, whether products or processes, in all fields of technology without discrimination as to the place or invention, the field of technology and whether products are imported or locally produced. The Agreement allows for exclusion from patentability for diagnostic, therapeutic and surgical methods for the treatment of humans or animals, and for plants and animals (other than micro-organisms), as well as for essentially biological processes for the production of plants or animals (other than micro-biological) or non-biological processes). Plant varieties, however, must be protectable either by patents, or *sui generis* (a class by itself) system or by any combination of the two.

These formulations of the extent of patent protection in the Agreement have given rise to a number of possible implications. Firstly, the impact of this change on the various sectors of the economies, particularly pharmaceutical, of the developing countries needs to be accurately addressed. Problems have been envisaged in the area of patenting life-forms. These formulations, it is argued, merely outline the provisions as embodied in the legislations of developed countries. Similar problems have also been raised in the case of issuance of compulsory licences. The compulsory licencing procedures are invoked only when the patents are not adequately worked. In the Agreement the provision relating to compulsory licensing has been completely diluted. It is referred to as "Other uses without the Authorization of the Right Holder". In the final analysis, the provisions relating to patents have not only been diluted, they have also taken one-sided view of the operation of the patent system.

IV. Conclusion

This study briefly outlines the three major areas of the Final Act embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, namely, the World Trade Orgazination, Trade-related Investment Measures and the Trade-related Intellectual Property Rights. The implications arising out of these agreements need closer scrutiny in the light of the practices they may establish. For developing countries two issues may become important. One, the possibilities of changing their legal and policy options while pursuing the multilateral trade negotiations. It has far-reaching implications on the structure of their priorities as regards development and growth. The second problem relates to the building of infrastructural and operative mechanisms. In material terms, these aspects will be cost-intensive Till today many developing countries are not prepared for such a quick turnaround, notwithstanding the transitional arrangements provided for in the Agreement. In the AALCC Secretariat's view some of these issues will definitely need further substantive and specific elaboration so as to facilitate effective gains from the emerging new trade regimes.

Report of the International Seminar on Globalization and Harmonization of Commercial and Arbitration Laws, New Delhi, 31 March—1 April, 1995

An International Seminar on "Globalization and Harmonization of Commercial and Arbitration Laws" was held in New Delhi, on 31 March and 1 April, 1995. The seminar was organized by the Asian-African Legal Consultative Committee with the technical support provided by UNIDO, UNCITRAL, WIPO, World Bank and UNIDROIT and hosted by the Indian Council of Arbitration. The main objective of the Seminar was to promote standardization and harmonization of commercial laws and practices on uniformly agreed and acceptable basis in the Afro-Asian region in the wake of the ongoing phenomenon of liberalization and globalization of national economies.

In addition to representation from co-sponsoring and collaborating institutions and the Regional Centre for Arbitration, Kuala Lumpur, the Seminar was attended by delegations from: China, Ghana, Indonesia, Jordan, Kenya, Kuwait, Libyan Arab Jamahiriya, Malaysia, Mauritius, Mongolia, Namibia, Nepal, Nigeria, Oman, Palestine, the Philippines, Sri Lanka, Thailand, United Arab Emirates, Republic of Yemen and Zambia. Senior officers from the Ministries of Law, Justice and Company Affairs, Commerce and External Affairs, Government of India and a large number of participants from public and private sector undertakings in India, also participated.

The Seminar addressed itself to the following topics:

(i) Unification of the law and procedures for international commercial arbitration—UNCITRAL Model Law on International Commercial Arbitration;

(ii) Promoting unification of laws related to procurement of goods, construction and services; UNCITRAL Model Law on Procurement of Goods, Construction and Services;

(iii) Promoting unification of laws related to international sale of goods;

(iv) Unification of laws related to international transport of goods (Hamburg Rules, Multimodal Convention and the Convention on the Liability of Transport Terminal Operators in International Trade);

(v) Arbitration of intellectual property disputes;

(vi) New contractual modalities for infrastructure development—BOT/ BOO, International Franchising and joint ventures;

(vii) International Arbitration Services—Role of ICCA; ICC, AALCC Regional Centres and the Indian Council of Arbitration.

The proceedings of the Seminar were organized into nine working sessions. Four working sessions were held on the first day and five working sessions on the second day.

The first working session devoted to the topic "Unification of the Law and Procedure for International Commercial Arbitration"—was chaired by Dr. P.C. Rao, Secretary, Ministry of Law, Justice and Company Affairs, Government of India. The main speakers during this session were Mr. Robert Hunja, Legal Officer, UNCITRAL; Mr. Ram T. Madan, Advocate, Jenner & Block, Chicago; and Mr. D.C. Singhania, Solicitor and Senior Advocate, Supreme Court of India. Mr. Hunja's presentation was on UNCITRAL Model Law on International Commercial Arbitration. He related the background to the preparation of the Model Law and presented an overview of some of its salient features. He stated that the main objective of the Model Law was to contribute to the establishment of a unified legal framework for the settlement of international business disputes through arbitration. As such, the Model Law was intended to assist countries that do not have an arbitral legislation to adopt a modern arbitral legislation. It also provided a sound basis to orient the existing national arbitral legislation to the needs of modern international arbitration practice. While urging the implementation of the Model Law in the national domain for achieving a worldwide uniformity of the arbitration law and procedures, he laid special emphasis on the training of the arbitrators. Mr. Madaan's presentation was devoted to the 'Adoption of the UNCITRAL Model Law in the USA'. He pointed out that in USA, three approaches were being followed in regard to the implementation of the UNCITRAL Model Law: (i) amending the existing Federal Law in the light of the Model Law; (ii) adopting the Model Law in its entirety at the State-level; and adopting the Model Law partially at the State-level. Mr. Singhania referred to the salient features of the Model Law and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Dr. Rao while summing up the discussions emphasized that an essential ingredient of the economic reform programme should be a modern law for the settlement of international commercial disputes. Such a law should be supported by necessary infrastructure facilities including a Centre for ADR and providing training facilities for arbitrators.

The second session was devoted to 'UNCITRAL Model Law on Procurement of Goods, Construction and Services". The main speakers on this topic were Mr. Robert Hunja (UNCITRAL), Dr. Syed Ahmed (World Bank) and Mr. M.P. Gupta (India) Mr. Hunja in his presentation stated that while procurement expenditures represented a significant portion of the overall development expenditure in the developing countries, few of those countries had adequate legal framework for procurement. Since procurement of goods and services should be quality-oriented, and cost-effective, and procurement procedures fair and transparent, the UNCITRAL's Model Law on Procurement was intended to assist States in updating and modernising their existing laws or for the enactment of new legislation where none existed in the area of procurement of goods and services. Dr. Syed Ahmed (World Bank) spelt out the procurement guidelines prepared by the World Bank which were required to be followed by borrowers for the World Bank financed projects. Mr. M.P. Gupta referred to the international competitive bidding procedures in India and urged the Government of India to exclude World Bank aided works contracts from the operation of amendments effected by some of the States in India to the Indian Arbitration Act 1940. His suggestion was that pending the enactment of the proposed comprehensive legislation on arbitration by the Government of India it would be necessary and useful to execute World Bank contracts in any place outside the jurisdiction of the aforementioned State Governments to save such contracts from the mischief of the State amendments.

The third session was devoted to the "United Nations Convention on Contracts for the International Sale of Goods 1980". The leading speakers were Mr. Robert Hunja (UNCITRAL) and Mr. P.M. Bakshi, a former Member of the Law Commission of India. Mr. Hunja recounted the background leading to the adoption of the UN Convention on Contracts for the International Sale of Goods in 1980 and described its salient features. He stated that the Convention was basically restricted to the formation of the contract for international sale of goods and the rights and duties of the buyer and seller arising from such contracts. As such an important principle enshrined in the Convention was that there was utmost emphasis on the preservation of the contract and it was relatively difficult under the Convention to reject the goods and to say that there was no contract. Another principle embodied in the Convention was that of contractual freedom. As such, the Convention permitted the parties to exclude the application of the Convention or to derogate from or vary the effect of any of its provisions. The Convention thus gave primacy to the terms of the contract and its provisions were in the nature of being

suppletive rules to the international sale contract. He stated that although the Convention had been ratified by more than forty States, other States should soon adhere to it so that all international sales are governed by the Convention. Mr. P.M. Bakshi in his presentation set forth a comparative analysis of some of the important provisions of the UN Sales Convention and the Indian law applicable to the sale of goods.

The fourth session was devoted to the UN Convention on the Carriage of Goods by Sea 1978 (The Hamburg Rules) and the UN Convention on International Multimodal Transport of Goods, 1980. The leading speakers on this topic were Mr. R.S. Saran (India) and Mr. Robert Hunja (UNCITRAL). Mr. Saran first addressed himself to the UN Convention on the Carriage of Goods by Sea 1978, popularly known as the Hamburg Rules, and subsequently to the UN Convention on International Multimodal Transport of Goods, 1980. He observed that although the Hamburg rules represented a fair balance between the interests of the carrier and the cargo-owner unlike the Hague or Hague-Visby Rules which were tilted in favour of the carrier, the shipowning interests had not been happy with the Hamburg Rules with the result that almost all maritime States had not as yet ratified the Hamburg Rules. Despite this negative trend, in his view, indications were that the Hamburg Rules would catch on, although it might take some time. The factors, according to him, favouring the spread of the Hamburg Rules included trade compulsions and the very nature of the rules, e.g. mandatory application to both outward and inward bills of lading, requirement of bills of lading to including a paramount clause for incorporation of the Rules, wide options of forum for litigation and arbitration and mandatory nature of the Rules not permitting any worthwhile exclusion cases.

As regards the United Nations Convention on International Transport of Goods, 1980, it was stated that the striking feature of the Multimodal Transport System was not the actual merger or physical combination of various modes of transport, but the principle whereby the operator accepted liability, as a principal and not as an agent, for the cargo from the time he took over the charge of the cargo from the consignor until delivery to the consignee. In the multimodal regime, there was one document of transport, one rate and through liability. The Multimodal Convention subscribed to these principles. As for the implementation of the Multimodal Convention in India, the pointed out that although India had not ratified the Convention, it had enacted a legislation called "The Multimodal Transport of Goods Act 1993" to "provide for the regulation of the multimodal transportation of goods from any place in India to a place outside India on the basis of a multimodal contract and for matters connected therewith

or incidental thereto". The Act laid down the responsibilities and liabilities of multimodal transport operators and included other relevant provisions concerning lien, general average, jurisdiction for instituting action, arbitration etc.

Mr. Hunja (UNCITRAL) traced the evolution of the legal regime concerning the maritime transport of goods and described the salient features of the Hamburg Rules pinpointing at the same time the many improvements which these Rules had made over the Hague or Hague-Visby rules. According to him, these improvements were: (i) The scope of application of the Hamburg Rules was substantially wider than that of the Hague Rules; (ii) The duration of liability of the carrier was wider in the case of the Hamburg Rules as compared to that in the hague Rules; (iii) While both the Hamburg and Hague Rules based the liability on presumed fault of the carrier, in the case of the latter such liability could be disclaimed by a series of exemptions; (iv) The financial limits of liability of the carrier were 25% higher in the Hamburg Rules than those established under the 1979 Additional Protocol to the Hague Rules; (v) Unlike the Hamburg Rules, the Hague Rules did not provide for the liability of the carrier for delay in delivery; (vi) In the Hamburg Rules, limitation period for bringing suits was two years while in the Hague Rules, it was one year. Finally, Mr. Hunja stated that since the Hamburg Rules were elaborated on the initiative of the developing countries and were in their own interest, they must, in particular, India should expedite their adherence to the Rules so that the outmoded Hague Rules could be displaced and the prevailing uncertainty arising on account of a multiplicity of regimes applicable to the carriage of goods by sea could be ended.

The first session on the second day was devoted to the "United Nations Convention on the Liability of Transport Terminal Operators in International Trade, 1993". In his introductory remarks, the Chairman Mr. Anthony Forsow, High Commissioner for Ghana in India referred to the evolving legal regime concerning the maritime transport of goods and stated that this Convention covered the last link in the chain of liability concerning the transport of goods. He pointed out that while the carrier's liability through various transport conventions was governed by harmonized and mandatory rules, there existed periods during which the goods in transit were not subject to a mandatory regime. The negative consequences of these gaps in the liability regime were serious as in most cases goods lost or damaged occurred not during the actual carriage, but when they were in the care of custody of the terminal operator. The 1993 Convention therefore sought to establish a uniform legal regime governing the liability of transport terminal operators.

Mr. Robert Hunja referred to the policies underlying the Convention, the gaps covered by the Convention in liability regimes left by other international conventions, and the need for harmonization and modernization in the area and the benefits that would accrue from the adoption of the legal regime instituted by the Convention.

The second session was devoted to "Arbitration of Intellectual Property Disputes". The leading speakers on this topic were Dr. Francis Gurry, Director of the WIPO Arbitration Centre and Dr. K.V. Swaminathan, Chairman, Waterfalls Institute of Technology Transfer.

Dr. Gurry in the course of his presentation identified the following factors which motivated the establishment of WIPO Arbitration Centre to cater to the arbitration of intellecutal property disputes: (i) the central position which intellectual property had come to assume in the contemporary economy; (ii) increasing international character of the exploitation of intellectual property as a consequence of internationalization of markets; (iii) increasing resort to, and increasing interest, in alternative dispute resolution (ADR) techniques; and (iv) specific characteristics of intellectual property disputes. He then outlined the services provided by the WIPO Arbitration Centre for the resolution of intellectual property disputes through good offices, mediation, arbitration and expedited arbitration.

Dr. Swaminathan, in the course of his presentation demonstrated with the help of transparencies, problems and issues that would need to be addressed by the emerging legal regime in the area of intellectual property following upon the adoption of the new GATT Accord and in particular, the companion Agreement on Intellectual Property Rights. He emphasized the need for coining a definition of an intellectual property dispute, evolution of suitable criteria for the selection of arbitrators for tackling such disputes and possibility of inclusion of Indian arbitrators in the WIPO Arbitration Centre's panel of arbitrators.

The third session was devoted to the topic "New Contractual Modalities for Infrastructure Development—BOT/BOO, Franchising and Joint Ventures". The main speakers were Mr. Jose M.De. Lima-Caldas, Chief, Technology Division, UNIDO, Mr. Robert Hunja (UNCITRAL), Dr. Syed Ahmed (World Bank), Mr. Asghar Dastmalchi, Assistant Secretary-General, AALCC and Mr. D.S. Mohil (AALCC).

Mr. Lima-Caldas (UNIDO) in his presentation referred to the UNIDO Programme on BOT Strategy which was composed of the following elements: (a) the establishment of guidelines and standard procedures for the negotiation and implementation and standard procedures for the negotiation

and implementation of BOT arrangements; (b) the availability of an advisory taskforce that can provide assistance in connection with specific BOT projects; and (c) technical assistance at the enterprise, national or regional levels for capacity building and policy advice related to the implementation of the BOT scheme. He pointed out that in pursuance of this programme, UNIDO was currently engaged in the formulation of Guidelines for Development, Negotiation and Contracting of BOT Projects. The main objectives of these Guidelines would be: (i) To give developing countries basic and strategic orientation so as to strengthen their capabilities in promoting and implementing BOT projects; (ii) to provide practical information on the structures, procedures and basic issues of BOT arrangements; (iii) To support dissemination and the learning process of BOT strategy; and (iv) To contribute towards reducing the time and expenses of BOT bidding, negotiation and contracting through the preparation of procedures and model documentation.

Mr. Hunja also identified the possible areas which UNCITRAL was likely to take up in the near future in regard to the BOT contracts. He also touched upon the legal problems that could arise in the implementation of such projects because of inadequacy of legal framework, procurement aspects and complexity in contracting.

Dr. Ahmed (World Bank) introduced his paper entitled "The BOT Model of Financing Infrastructure Projects in Developing Countries". The paper outlined the basic concept of a BOT project; the requirements for a conducive legal environment for successfully structuring and implementing a BOT project; and carried an analysis of different contractual arrangements that could form part of a BOT project.

Mr. Asghar Dastmalchi, Assistant Secretary-General, AALCC, introduced the paper on "International Franchising" contributed by UNIDROIT at the request of the AALCC. The paper discussed different ways of franchising internationally and concluded that it was the master franchise agreement which was most commonly used for international franchising. It also focussed on the nature of the relationship between the master franchise agreement and sub-franchise agreements, applicable law and jurisdiction, the settlement of disputes, and problems associated with the tripartite nature of the relationship between franchisor, sub-franchiser and sub-franchisees, particularly in relation to termination and disclosure.

The paper entitled "Legal Aspects of Joint Ventures in Asia and Africa" was introduced by Mr. Mohil (AALCC). The paper traced the evolution of joint ventures, dealt with the relative merits and demerits of contractual and equity joint venture, outlined the legal framework in

Asian and African countries applicable to joint venture operations and provided guidelines for the setting up a joint venture and the prototype of a joint venture contract.

The fourth session was devoted to the "Role of ICCA, ICC, AALCC Regional Centres and Indian Council of Arbitration". Mr. F.S. Nariman, President of the ICCA, at the outset, gave a brief account of the role played by and activities of the ICCA and ICC in the area of international commercial arbitration. He stressed the need for intensifying interaction between the arbitral institutions worldwide so that rules and practices were standardized.

Mr. Essam Abdul Rehman Mohamed, Deputy Secretary-General, AALCC, introduced the paper contributed by Dr. Mohamed Aboul-Enein, Director of the Regional Centre for International Commercial Arbitration, Cairo, on the role of the Cairo Centre in the resolution of commercial and investment disputes. The paper gave an outline of the services provided by the Centre for the resolution of international commercial and investment disputes through arbitration, conciliation, mediation, claims review board, mini-trials etc.

Ms. P.G. Lim, Director of the Regional Centre for Arbitration, Kuala Lumpur, in her address gave an account of the services provided by the Kuala Lumpur Centre, a non-profit making institution, for the resolution of international commercial disputes and the training programmes and conferences organized by it to populrize the institution of arbitration and alternative dispute resolution (ADR) techniques. She pointed out that the Centre had a global network of cooperation agreements with the arbitral institutions in different parts of the world and was thus able to provide administrative services and facilities for the conduct of arbitral proceedings under the rules or auspices of the other arbitral institutions.

Mr. S.C. Nirwani, Executive Director of ICCA, cautioned the parties concluding business contracts not to forget making provisions for the settlement of possible disputes by a proper recourse to arbitration. According to him the clauses that the parties should insert in the contracts included a valid arbitration clause; reference of the dispute to institutional arbitration; selection of procedural rules (UNCITRAL or ICC); the law applicable to the contract; and the venue of arbitration.

The fifth and final working session devoted to "Practical, Legal and Arbitration Problems" provided an opportunity for interaction between the speakers of the previous sessions and the participants. It was agreed to make the following recommendation:

"The Seminar recommended taking the benefit of the arbitration facilities and the Alternative Dispute Resolution (ADR) mechanisms and called upon the Asian-African countries to pattern their laws on the United Nations Conventions related to the International Sale of Goods; Carriage of Goods by sea; Liability of Transport Terminal Operators in International Trade; Multimodal Transport of Goods, and the Model Laws on International Commercial Arbitration and International Procurement".