6. The participants in the consultative meeting referred to earlier were of the unanimous view that it would be in the interest of international commercial arbitration if UNCITRAL would initiate steps leading to the establishment of uniform standards of arbitral procedure. It was considered that the preparation of a model law on arbitration would be the most appropriate way to achieve the desired uniformity. Such undertaking, if successful, would also meet the concerns expressed in the AALCC recommendations. It would have to be considered whether such model law should be geared to international commercial arbitration or whether it should cover both international and domestic arbitration proceedings.

7. The major reason for this proposal is the fact that most national laws on arbitral procedure were drafted to meet the needs of domestic arbitration and that many of these laws are in need of revision. A model law could therefore be useful particularly if it would take into account the specific features of international commercial arbitration and modern arbitration practice. Another reason, which was stated by Professor Ion Nestor (Romania) in his report on arbitration submitted to the fifth session of the Commission,[6] is the need for greater uniformity of national laws on arbitration.

8. Yet another reason is the divergence existing between frequently used arbitration rules and national laws; this is the area of concern expressed by AALCC in its recommendations. For example, some national laws restrict the power of the parties to determine the applicable law. Some national laws do not recognize the competence of the arbitral tribunal to decide about its own jurisdiction, or they provide for judicial control over the composition of the tribunal and sometimes even over the application of substantive law. Other laws establish certain nationality requirements for the arbitrators or require the award to be accompanied by a statement of reasons irrespective of any agreement by the parties to the contrary.

9. It is suggested that an UNCITRAL model law on arbitral procedure would, if implemented at the national level, solve many of the problems referred to. It would also establish universal standards of fairness and would, thus, meet the concern expressed in one of the proposals of AALCC. Moreover, such a model law would prevent some, if not all, of the difficulties detected in the survey on the application and interpretation of the 1958 New York Convention (cf. A/CN.9/168, para. 49). Finally, by the elimination of certain local particularities in national laws, a model law would be relevant in the context of the proposal of ICC to limit the reasons for setting aside awards to the grounds for refusing recognition and enforcement specified in article V, paragraph 1 (*a-d*) of the 1958 New York Convention.

10. If the Commission were to agree with the above recommendation, it may wish to request the Secretary-General (*a*) to prepare an analytical compilation of provisions of national laws pertaining to arbitration procedure, setting forth the major differences between such provisions, and (*b*) to prepare, in consultation with interested international bodies, a preliminary draft of a model law on arbitral procedure.

[6] A/CN.9/64, para. 140 (Yearbook ... 1972, part two, III).

E. Note by the Secretariat: issues relevant in the context of the UNCITRAL Arbitration Rules (A/CN.9/170)*

1. The secretariat of the Commission wishes to draw attention to two issues that have arisen in the context of the UNCITRAL Arbitration Rules. These issues relate to the use of the Rules in institutional arbitration and to the designation of an appointing authority.

I. The use of the UNCITRAL Arbitration Rules in administered arbitration

2. The Commission will recall that when the Rules were first submitted in preliminary draft form[1] they provided for "administered" and "non-administered" arbitration, depending on whether the parties selected an arbitral institution to administer the arbitration (administered arbitration) or agreed to arbitration without selecting such an institution (non-administered arbitration). The differences between the draft rules applicable to these two types of arbitration were slight. Basically, the arbitral institution in administered arbitration was entrusted with the functions which, in non-administered arbitration, were those of the appointing authority.

3. The Commission, when it considered the preliminary draft Rules at its eighth session (1975), had a full discussion on the desirability of including administered arbitration within the scope of the UNCITRAL Arbitration Rules. The prevailing view in the Commission was "to exclude, for the time being, administered arbitration from the scope of the Rules, but to permit parties to designate in advance a person or institution to carry out the functions of an appointing authority as specified in the Rules".[2]

4. Since 1977, when the Rules were issued, several arbitral institutions have declared their willingness to serve as an administrative body in connexion with the UNCITRAL Arbitration Rules or have adopted these Rules as their own. One example is provided by the rules of procedure of the Inter-American Commercial Arbitration Commission (IACAC), issued on 1 January 1978. The IACAC rules reproduce the substantive provisions of the UNCITRAL Arbitration Rules as "adapted to the institutional requirements of the Inter-American Commercial Arbitration Commission". An example of

* 11 May 1979.

[1] A/CN.9/97 (Yearbook ... 1975, part two, III, 1).

[2] UNCITRAL, report on the eighth session (A/10017), p. 41 (Yearbook ... 1975, part one, II, A).

such adaptation is that the term "IACAC" is substituted in the IACAC rules for "UNCITRAL" and "appointing authority". The parties are deemed to have made the IACAC rules a part of their arbitration agreement whenever they have provided for arbitration by the Inter-American Commercial Arbitration Commission or under its rules. Another example of the adoption of the UNCITRAL Arbitration Rules by an arbitral institution is found in the Arbitration Rules of the London Court of Arbitration (1978 edition) which make provision for subsidiary[3] and primary[4] application of the UNCITRAL Arbitration Rules. Yet another example is where an arbitral institution, though it has its own set of rules has declared that it is prepared to act in accordance with any other set of rules. This was done, for instance, by the Arbitration Institute of the Stockholm Chamber of Commerce which referred in particular to the UNCITRAL Arbitration Rules.[5]

5. The question of the use of the UNCITRAL Arbitration Rules in administered arbitration was raised in a somewhat different context at the recent session of the Asian-African Legal Consultative Committee (AALCC) at Seoul in February 1979. The dispute settlement scheme evolved by the AALCC envisages arbitration under the auspices of national institutions or regional centres, *ad hoc* arbitration under the UNCITRAL Arbitration Rules and also under the auspices of international agencies in specific areas. AALCC has established regional centres for arbitration at Kuala Lumpur and at Cairo and will soon establish a third centre in an African country. At its Seoul session AALCC, in its Sub-Committee on International Trade Law Matters, discussed, *inter alia,* the question of the extent to which the UNCITRAL Arbitration Rules could be used by a regional centre as its own rules and what modifications would be necessary in that case. The issue in particular is that the regional centres, in contrast to other existing arbitral institutions, do not yet have their own arbitration rules. While it is of course for AALCC and the regional centres to determine which institutional rules should be adopted, it would assist the secretariat of the Commission, which collaborates closely with the secretariat of AALCC, if the Commission were to have an exchange of views on the general issue raised in this part of the note.

6. There are thus different ways in which arbitral institutions have approached the UNCITRAL Arbitration Rules in the context of administered arbitration. Several conclusions may be drawn:

(*a*) Although the Rules were written with non-administered arbitration in mind, they have nevertheless proved to be suitable for use in administered arbitration. The IACAC Arbitration Rules, for instance, are identical to the UNCITRAL Arbitration Rules except for certain modifications of form, to permit accommodation of these Rules by IACAC, and the addition of an administrative fee schedule.

(*b*) The mere fact that arbitral institutions have adapted, or seek to adapt, the UNCITRAL Arbitration Rules to their institutional requirements seems to indicate that there might be a need, if not for UNCITRAL rules for administered arbitration, then for a general recommendation as to how the Rules might best be adapted to such arbitration.

(*c*) Whilst the adaptation of the UNCITRAL Arbitration Rules to administered arbitration may be seen as promoting the establishment of uniform standards of arbitral procedure, two questions should nevertheless be considered. First, should the Commission scrutinize the use of its Rules in such a manner? Secondly, what is the situation when parties have agreed to arbitration under the UNCITRAL Arbitration Rules before an arbitral institution which, in one way or another, administers arbitration "in accordance with" the Rules? As to the latter question, it would appear that no ambiguities exist where, as is the case with the Arbitration Institute of the Stockholm Chamber of Commerce, the arbitral institution has declared that it is prepared to act in accordance with the UNCITRAL Arbitration Rules and as an appointing authority under these Rules. Ambiguity may exist, however, where, as under rule 2 (9) of the Arbitration Rules of the London Court of Arbitration, the rules of the arbitral institution remain applicable to the extent they are not "at variance with the UNCITRAL Rules".

II. THE APPOINTING AUTHORITY

7. The UNCITRAL Arbitration Rules provide, in specified instances, for the intervention of an appointing authority. The parties may designate an appointing authority at the time the arbitration agreement is concluded or such authority may thereafter be agreed upon by the parties when they wish to enlist its assistance in the appointment of an arbitrator. In one particular instance the appointing authority may be designated by the Secretary-General of the Permanent Court of Arbitration at The Hague (arts. 6 (2) and 7 (2) (*b*)).

8. Under the Rules, the functions of an appointing authority, in the circumstances specified in the relevant articles, are:

(*a*) To appoint the sole arbitrator (art. 6 (2)) or, where there are to be three arbitrators, the second arbitrator (art. 7 (2)) and the presiding arbitrator (art. 7 (3));

(*b*) To decide on the challenge of an arbitrator (art. 12 (1));

(*c*) To appoint an arbitrator in replacement (art. 13);

(*d*) To assist the arbitral tribunal in fixing its fees (art. 39 (2), (3) and (4)) and the amounts of any deposits or supplementary deposits of costs (art. 41).

9. Since the UNCITRAL Arbitration Rules have not been written for institutional arbitration, the assistance of an appointing authority may be an essential

[3] Rule 2 (8): "Unless otherwise provided in these Rules, the UNCITRAL Arbitration Rules shall apply to an arbitration held under these Rules."

[4] Rule 2 (9): "If the parties so agree, the arbitration shall be conducted under the UNCITRAL Arbitration Rules to the exclusion of such of these Rules as are at variance with the UNCITRAL Rules."

[5] *Arbitration in Sweden*, published by the Stockholm Chamber of Commerce (1977), p. 8.

element in the arbitral process. The Commission recognized this by drafting detailed rules regarding the functions of the appointing authority and by advocating, in the model arbitration clause accompanying the Rules, that the name of the institution which, or the person who, will function as appointing authority be indicated in the arbitration clause itself.

10. The parties may of course designate any institution or person as appointing authority, but it is likely that the consent of the institution or person concerned would first have to be obtained. There is, moreover, not always absolute certainty that a person or institution, once designated, will indeed act, or act promptly, when called upon to do so under the Rules. Also, parties and their counsel may well be ignorant as to which institutions or persons can be designated as an appointing authority.

11. These are some of the reasons that have been advanced in communications to the secretariat as warranting the establishment of a list of arbitral institutions that have declared their willingness to act as appointing authority under the UNCITRAL Arbitration Rules and whose prior consent to act as such would not be required. As was stated in a letter received earlier this year by the secretariat: "In view of all the skill and work that have gone into the drafting of the UNCITRAL Rules, it would be unfortunate if their use were hampered by the mere lack of recognized appointing authorities".

12. It may be noted that several institutions have already indicated that they are prepared to serve as appointing authority under the UNCITRAL Arbitration Rules. Among these are the following: The International Chamber of Commerce, the London Court of Arbitration, the American Arbitration Association, and the Arbitration Institute of the Stockholm Chamber of Commerce.

13. The Commission may wish to consider the desirability of issuing a list of arbitral institutions that have declared their willingness, if so requested to serve as appointing authority under the UNCITRAL Arbitration Rules. It is assumed that many institutions would make such a declaration if their attention were drawn to the appropriateness of doing so.