

### III. INTERNATIONAL COMMERCIAL ARBITRATION

#### Note by the Secretary-General (A/CN.9/127)\*

1. The Asian-African Legal Consultative Committee (AALCC),<sup>1</sup> at its seventeenth session held at Kuala Lumpur, Malaysia, 30 June-5 July 1976, considered the UNCITRAL Arbitration Rules that had been approved by the Commission at its ninth session.<sup>2</sup>

2. At the conclusion of its deliberations, the AALCC on 5 July 1976 adopted the decision concerning international commercial arbitration that is set forth as an annex to this note.

3. The Commission may wish to note that in paragraph 2 of its decision the AALCC commended the work of the Commission on the UNCITRAL Arbitration Rules and recommended their use in the settlement of disputes arising in the context of international commercial relations.

4. The Commission may wish to note further that in paragraph 3 of its decision the AALCC invited it to consider the possibility of drafting a Protocol to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In order to assist the Commission in its consideration of paragraph 3 of the AALCC decision, the Secretariat has prepared document A/CN.9/127/Add.1\*\* which analyses the specific proposals by the AALCC.

\* 20 October 1976.

\*\* Not reproduced in this volume.

<sup>1</sup> The following 32 States are members of the AALCC: Bangladesh, Egypt, Gambia, Ghana, India, Indonesia, Iran, Iraq, Japan, Jordan, Kenya, Democratic People's Republic of Korea, Republic of Korea, Kuwait, Libyan Arab Jamahiriya, Malaysia, Mauritius, Nepal, Nigeria, Oman, Pakistan, Philippines, Qatar, Sierra Leone, Singapore, Somalia, Sri Lanka, Syrian Arab Republic, Thailand, Turkey, United Republic of Tanzania, Yemen Arab Republic.

<sup>2</sup> See Report of the United Nations Commission on International Trade Law on the work of its ninth session, *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17)*, paras. 56-57 (Yearbook . . . , 1976, part one, II, A).

#### ANNEX

##### Decision by the Asian-African Legal Consultative Committee on international commercial arbitration

(Taken at its seventeenth session, Kuala Lumpur, 5 July 1976)

##### The Asian-African Legal Consultative Committee

1. Recommends to the States of the Asian-African region which have not ratified or acceded to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards to consider the possibility of ratification 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 should 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.