the parties concerned. Nothing has been overlooked—from the arbitration clause and its scope to the award, its interpretation, where necessary, and its possible correction, and finally the costs and their deposit by the parties.

We feel that this draft, which is practical and will be well received and utilized in the business world, should be adopted by UNCITRAL at its eighth session.

(*Signed*) Arnoldo MUSICH
Vice-President

(*Signed*) Alfredo CERVI
Executive Secretary

ANNEX IV

Resolution on the draft UNCITRAL arbitration rules adopted by the Fifth International Arbitration Congress (New Delhi, 7-10 January 1975)

[*Original: English*]

WHEREAS

The United Nations Commission on International Trade Law (UNCITRAL) requested its secretariat to prepare draft rules for optional use in *ad hoc* arbitration relating to international trade and to submit such rules for the Commission's eighth session (April 1975); and

The Commission requested that such rules be prepared in consultation (*inter alia*) with centres of international commercial arbitration, and consequently its secretariat invited the International Council for Commercial Arbitration (ICCA) to establish a representative group for consultation in the preparation of the rules; and

Following extensive consultation with the above group, a preliminary draft of such rules was issued by the Secretary-General on 4 November 1974, and was made available for consultation at this Congress; and

Views expressed in the further consultation during this Congress will be communicated to the Commission and will be given consideration in the further elaboration of the proposed rules:

BE IT RESOLVED THAT THE CONGRESS

Believes that the preparation by UNCITRAL of such rules is a valuable project that will facilitate arbitration and thereby will aid world trade;

Appreciates the opportunity for consultation in the preparation of the rules, and supports UNCITRAL's current programme for widespread consultation, with special reference to the views of parties who will make use of arbitration in all countries, including both developing and developed;

Endorses the principles of the preliminary draft of the rules and encourages UNCITRAL, in the light of comments made on this draft, to finalize the rules and make them available for use at the earliest possible date.

3. Report of the Secretary-General (addendum): suggested modifications to the preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (UNCITRAL Arbitration Rules) (A/CN.9/97/Add.2)*

INTRODUCTION

1. In November 1974 a report of the Secretary-General set forth a preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (A/CN.9/97,** hereinafter referred to as the "preliminary draft").

2. As was explained in the introduction to the above document, this preliminary draft was prepared pursuant to a decision taken by the United Nations Commission on International Trade Law (UNCITRAL) at its sixth session. Under this decision, the Secretary-General was requested to prepare such a draft set of arbitration rules "in consultation with regional economic commissions of the United Nations and centres of international commercial arbitration". Accordingly, the preliminary draft of November 1974 has been given widespread circulation and been transmitted, with a request for comments, to the above-mentioned regional economic commissions and to over 70 centres of commercial arbitration. In addition, as part of such consultation, the preliminary draft was made available for consideration at the Fifth International Arbitration Congress (New Delhi, India, 7-10 January 1975) and was the subject of intensive consideration by the First and Second Working Parties of that Congress.[1]

3. Written comments that have so far been received in response to the above-mentioned circulation of the preliminary draft are set forth separately in a note by the Secretary-General (A/CN.9/97, Add.1).† That note also sets forth the full text of a resolution adopted by acclamation at the above-mentioned Fifth International Arbitration Congress and which states that the Congress "*Endorses* the principles of the preliminary draft of the rules and encourages UNCITRAL, in the light of the comments made on this draft, to finalize the rules and make them available for use at the earliest possible date".

4. The discussions at the Congress, while giving general approval to the preliminary draft, also provided valuable suggestions as to points in regard to which the draft should be modified or clarified in the light of experience and practice with international commercial arbitration. These modifications and clarifications are indicated in this report. The discussions at the Congress also included various suggestions of a stylistic nature and other suggestions that did not receive widespread support. Such suggestions are not dealt with in this report, but have been noted by the Secretariat for further consideration together with comments which will be received in the future in response to the transmittal of November 1974 and in the light of any comments or decision by the Commission at its eighth session.

MODIFICATIONS IN THE PRELIMINARY DRAFT

A. *Agreement by the parties as to the seat of arbitration*

5. The introduction to the preliminary draft sets forth a model arbitration clause which recommends

* 6 March 1975.

** Reproduced in this Yearbook, part two, III, 1.

[1] The First Working Party of the Congress devoted all of its meetings, held on 7, 8 and 9 January, to a review of the preliminary draft. The Second Working Party included consideration of relevant portions of the preliminary draft within its topic dealing with the presentation of evidence in international commercial arbitration.

† Reproduced in this Yearbook, part two, III, 2.

that the parties reach advance agreement on specific points; with respect to these points specific clauses are set forth with blanks to be completed by the parties. These clauses include provision for the designation of an administering institution or appointing authority, the number of arbitrators, and the language or languages to be used in the proceedings. The model clause also notes that, if the parties wish to determine beforehand the place of arbitration, their choice should also be added.[2]

6. The discussions at the New Delhi Congress disclosed a widespread body of experience and opinion to the effect that it was important for the parties to agree in advance on the seat of arbitration. On points not covered by the arbitration rules, the procedural law of the seat of arbitration may be applicable. In addition, the award would be rendered at the seat of arbitration; the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards in article V attaches special significance to the rules and law of the country in which the award is made. In view of these factors, there was general support that the parties should be encouraged to agree in advance on the seat of arbitration. Consequently, the model clause should include the following:

"(*d*) The seat of the arbitration shall be . . ."

7. In these discussions it was understood that if the parties, in spite of this recommendation, did not agree on the seat of arbitration, the provision of article 14, paragraph 1, would be applicable; under this article the seat of arbitration would then be determined by the arbitrators. It was generally agreed that, for reasons outlined above, this determination should be made as early as possible. It seems advisable to draw attention to this in the commentary to article 14.

8. In these discussions it was also recognized that, by specifying the seat of arbitration, the parties would not require that all of the hearings or other aspects of the arbitration occur at the specified place; article 14 so provides (paras. 3 and 4).

B. *Time limits*

9. The discussions at the New Delhi Congress included consideration of the time-limits set forth in the preliminary draft. The objective of the draft rules to promote prompt disposition of arbitral proceedings met with general approval; but the discussions disclosed the view that the specific time-limits, throughout the rules, should be re-examined. Thus, it was felt that some of these time-limits (e.g., the 15-day period mentioned in article 7, para. 5), seemed to be too short and needed further consideration.

10. It was recognized that pursuant to article 20 the parties (or the arbitrators in the absence of agreement by the parties) may extend the time-limits mentioned in section III (arbitral proceedings); a similar provision is to be found in article 12 concerning the time-limits in section II (appointment of arbitrators). Here, where the arbitrators are not as yet appointed, the extension may be given by the parties or by the arbitral institution designated by the parties. It was also recognized that the failure by one party to observe a given time-limit has, according to article 25, no consequences in case the other party does not promptly state his objection to such non-compliance.

11. One suggestion for speeding up the proceedings, together with more ample time-limits, was a combination of the notice of arbitration, provided for in article 3, with the statement of claim (art. 16). It was argued that, when starting arbitral proceedings, the claimant already has full knowledge of the points at issue and of the relief or remedy sought. The statement of claim could therefore readily be combined with the notice of arbitration in which the latter have also to be mentioned. This combination would save time. Arbitrators, once appointed, would then already have at their disposal the full statement of claim. This would then also apply to the respondent, who could start with the preparation of his statement of defence during the period necessary for the appointment of the arbitrators.

12. It therefore seems advisable, in redrafting the rules, to give effect to this suggestion.

C. *Oral hearings for the presentation of evidence or argument*

13. The preliminary draft draws a distinction between the obligation to hold oral hearings for the presentation of evidence and oral hearings for the presentation of argument. Thus article 13 provides in paragraph 3 that oral hearings must be held if one of the parties offers to produce evidence by witnesses.[3]

14. On the other hand, paragraph 2 provides that, unless both parties agree that oral arguments shall be presented, the arbitrators would have the authority to decide that the proceedings would be conducted solely on the basis of documents and other written materials. This latter provision contemplates that even if only one party desired an oral hearing for the presentation of argument, the arbitrators could be expected to provide for such an oral hearing in every case where there was real need therefor; on the other hand, it was thought desirable to permit the arbitrators to dispense with an oral hearing in cases where it was requested by only one party and where the hearing would be conducive to unnecessary delay and expense.

15. The consultations at the New Delhi Congress disclosed a preponderant opinion that the presentation of oral argument was a right generally available in legal proceedings which should also be available in arbitral proceedings at the request of either party. It was also noted that costs resulting from a demand for an unnecessary hearing might be assessed to the party making this demand.

[2] The full text of the model clause appears in the introduction to the preliminary draft at point 6.

[3] The preliminary draft added this bracketed language: "unless the arbitrators unanimously decide that such proposed evidence is irrelevant". It was generally concluded that the bracketed language was not necessary.

16. On reconsideration of the matter in the light of this consultation, it seems advisable to replace paragraphs 2 and 3 of article 13 with the following single paragraph:

"If either party so requests, the arbitrators shall hold hearings for the presentation of evidence by witnesses or for oral argument. In the absence of such a request, the arbitrators may decide whether the proceedings shall be conducted solely on the basis of documents and other written materials".

D. *Affidavit*

17. In connexion with the hearing (art. 21), the suggestion was made that special reference should be made to the possibility of presenting evidence by witnesses in the form of written statements. Under some circumstances this method could save considerable time and expense connected with the arrangement of a hearing in international cases as envisaged by the draft rules.

18. This written statement could take the form of an affidavit, sworn to by the person who gives such evidence; it could also be a written statement simply signed by him. The rules need not regulate the form of the written statement. This choice may initially be left to the party offering the written statement, subject to a possible ruling by the arbitrators that might include a request for oral testimony by the person who made the statement.

19. Therefore it seems advisable to supplement article 21 with the following paragraph that might follow the present paragraph 4:

"Evidence of witnesses may also be presented in the form of written statements".

E. *Interim measures*

20. In connexion with article 22 a question was raised as to the form in which the measures envisaged in this article should be established. It was generally agreed that the article should be clarified by adding the following:

"Such interim measures may be established in the form of an interim award".

CONCLUSION

21. In addition to the modifications and clarifications indicated in this report, other suggestions were received at the New Delhi Congress; as has been noted (para. 4 above), these will be considered in connexion with the preparation of a revised version of the present draft.

22. In addition, the modifications and clarifications of the preliminary draft set forth in this report call for certain adjustments in the commentary. This revision will also be made in the course of preparing a revised version of the rules.

4. Report of the Secretary-General (addendum): observations on the preliminary draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade (UNCITRAL Arbitration Rules) (A/CN.9/97/Add.3)*

NOTE BY THE SECRETARIAT

The annexes to this note set forth the observations submitted by the Government of Norway, the Hungarian Chamber of Commerce, the Inter-American Commercial Arbitration Commission and the Inter-American Development Bank.

ANNEX I

Observations by Norway

[*Original: English*]

From a Norwegian point of view there are no major objections to the preliminary draft of the UNCITRAL Arbitration Rules, contained in document A/CN.9/97.** The draft rules seem to provide a good basis for further discussions.

The Norwegian Government will make the following observations to some of the draft articles:

Article 1

The scope of the Rules (para. 1) should be extended to all disputes which may arise out of any contract, any commercial transaction or another specific (defined) commercial relationship between the parties.

Paragraph 3 should follow more closely the pattern of Article II, paragraph 2 of the 1958 New York Convention and read:

3. "Agreement in writing" means an arbitration clause in a contract or a separate arbitration agreement, signed by the parties or contained in an exchange of letters, telegrams or telexes.

Article 4

In paragraph 3 the period of five days seems to be rather short in inter-continental air mail services and may perhaps be extended to seven days.

Article 11

In case of replacement of an arbitrator during the course of the arbitral proceedings, the hearings held previously should be repeated, unless the arbitral tribunal decides otherwise with the consent of the party having appointed the replaced arbitrator. The provisions in paragraph 2 should be altered to comply with this.

Article 13

The provision in paragraph 1 that the parties be treated with absolute equality ought to be more precise, as it seems insufficient to prevent real inequality between the parties. Such inequality may occur if the parties meet with problems of different kinds during the arbitral proceedings which are treated separately and in different ways by the arbitrators. It is not sufficient that the same formal rules be applied to both parties.

It seems doubtful whether paragraph 3 would mean that oral hearings other that the rendering of evidence will take place in these cases. It seems recommendable that the arbitrators be competent to refuse evidence that they deem irrelevant, as suggested in the bracketed language.

* 1 April 1975.

** Reproduced in this volume, part two, III, 1.