

**REPORT
OF THE
UNITED NATIONS COMMISSION
ON
INTERNATIONAL TRADE LAW
on the work of its third session**

6-30 April 1970

**GENERAL ASSEMBLY
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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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INTRODUCTION

The present report of the United Nations Commission on International Trade Law covers the Commission's third session held at United Nations Headquarters from 6 to 30 April 1970.

Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, by which the Commission was established, this report is submitted to the General Assembly and also is submitted for comments to the United Nations Conference for Trade and Development.

CHAPTER I

ORGANIZATION OF THE SESSION

A. Opening

1. The United Nations Commission on International Trade Law (UNCITRAL) opened its third session at United Nations Headquarters in New York on 6 April 1970. The session was opened on behalf of the Secretary-General by Mr. Constantin A. Stavropoulos, the Legal Counsel of the United Nations.

B. Membership and attendance

2. Under General Assembly resolution 2205 (XXI), by which UNCITRAL was established, the Commission consists of twenty-nine States, elected by the Assembly. The present members of the Commission, elected by the Assembly on 30 October 1967, are the following States: 1/

Argentina	Hungary
Australia	India
Belgium	Iran
Brazil	Italy*
Chile*	Japan*
Colombia*	Kenya
Congo (Democratic Republic of)	Mexico
Czechoslovakia*	Nigeria*
France*	Norway*
Ghana*	Romania
Spain	United Arab Republic*
Syria	United Kingdom of Great Britain and Northern Ireland*
Thailand*	
Tunisia	United Republic of Tanzania*
Union of Soviet Socialist Republics	United States of America

3. All the States members of the Commission were represented at the session.

1/ The term of office of all members began, in accordance with General Assembly resolution 2205 (XXI), on 1 January 1968. The fourteen members marked with an asterisk were selected by the President of the General Assembly to serve for a term of three years, ending on 31 December 1970. The other fifteen members will serve for the full term of six years, ending on 31 December 1973.

4. The following United Nations organs, specialized agencies, intergovernmental and international non-governmental organizations were represented by observers:

(a) United Nations organs

United Nations Conference on Trade and Development (UNCTAD)

(b) Specialized agencies

International Bank for Reconstruction and Development (IBRD); International Monetary Fund (IMF); Inter-Governmental Maritime Consultative Organization (IMCO).

(c) Intergovernmental organizations

Commission of the European Communities; Council of the European Communities; Council for Mutual Economic Assistance (CMEA); Hague Conference on Private International Law; Inter-American Juridical Committee; International Institute for the Unification of Private Law (UNIDROIT); Organisation of African Unity (OAU); Organization of American States (OAS); United International Bureaux for the Protection of Intellectual Property (BIRPI).

(d) International non-governmental organizations

International Chamber of Commerce (ICC); International Chamber of Shipping (ICS); International Law Association (ILA); World Peace Through Law Center.

C. Election of officers

5. At its 50th and 51st meetings, on 6 and 7 April 1970, the Commission elected the following officers 2/ by acclamation:

Chairman	Mr. Albert Lilar (Belgium)
Vice-Chairman	Mr. Eugenio Cornejo Fuller (Chile)
Vice-Chairman	Mr. Abdelmajid Ben Messaouda (Tunisia)
Vice-Chairman	Mr. Ion Nestor (Romania)
Rapporteur	Mr. Shinichiro Michida (Japan)

D. Agenda

6. The agenda of the session as adopted by the Commission at its 51st meeting, on 7 April 1970, was as follows:

2/ In accordance with a decision taken by the Commission at the second meeting of its first session, the Commission shall have three Vice-Chairmen, in order that each of the five groups of States listed in General Assembly resolution 2205 (XXI), section II, para. 1, will be included among the officers of the Commission.

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. International sale of goods:
 - (a) Uniform rules governing the international sale of goods;
 - (b) Time-limits and limitations (prescription) in the field of international sale of goods;
 - (c) General conditions of sale and standard contracts.
5. International payments:
 - (a) Negotiable instruments;
 - (b) Bankers' commercial credits;
 - (c) Guarantees and securities.
6. International commercial arbitration.
7. International legislation on shipping.
8.
 - (a) Register of organizations;
 - (b) Register of texts;
 - (c) Bibliography.
9. Co-ordination of the work of organizations in the field of international trade law and collaboration with those organizations.
10. Training and assistance in the field of international trade law.
11. Publication of a Yearbook.
12. Programme of work through 1973.
13. Date of the fourth session.
14. Adoption of the report of the Commission.

E. Establishment of committees of the whole

7. The Commission held twelve plenary meetings in the course of the session.
8. At its 51st meeting, on 7 April 1970, the Commission decided to establish two committees of the whole (Committee I and Committee II), which would meet simultaneously to consider the agenda items to be referred to them.
9. The Commission referred the following items to Committees I and II:

Committee I

- Item 4 International sale of goods:
- (a) Uniform rules governing the international sale of goods;
 - (b) Time-limits and limitations (prescription) in the field of international sale of goods;
 - (c) General conditions of sale and standard contracts.

Committee II

- Item 5 International payments:
- (a) Negotiable instruments;
 - (b) Bankers' commercial credits;
 - (c) Guarantees and securities.
- Item 7 International legislation on shipping.
- Item 8 Register of organizations, register of texts; bibliography.
- Item 11 Publication of a Yearbook.

10. Committee I met from 7 to 27 April 1970 and held twenty-two meetings. Committee II met from 8 to 27 April 1970 and held fifteen meetings.

11. At its first meeting, on 7 April 1970, Committee I elected unanimously Mr. Jorge Barrera Graf (Mexico) as Chairman and Mr. Emmanuel Sam (Ghana) as Rapporteur. At its first meeting, on 8 April 1970, Committee II elected unanimously Mr. Iván Meznerics (Hungary) as Chairman and Mr. Stephen F. Parsons (Australia) as Rapporteur.

12. At its third meeting, on 8 April 1970, Committee I decided to establish a sessional working party on the scope of application of the uniform rules governing the international sale of goods. The working party consisted of the representatives of Argentina, Ghana, Hungary, India, Norway, and the United Kingdom of Great Britain and Northern Ireland. At its fifth meeting, on 9 April 1970, Committee I decided to establish a sessional working party on the application of usages in the international sale of goods. That working party consisted of the representatives of Australia, the Democratic Republic of the Congo, the Union of Soviet Socialist Republics and the United States of America.

13. In accordance with the decision taken by the Commission at its 51st meeting on 7 April 1970, according to which it was left to each Committee to decide if summary records of its discussions were needed, 3/ Committee I decided that summary records of its discussions should be issued. Committee II decided that summary records of its discussions relating to negotiable instruments (item 5 (a) of the agenda) and international legislation on shipping (item 7 of the agenda) should be issued.

14. The Commission, after having considered the reports of Committee I and Committee II, decided to include the substance thereof in its report on the work of its third session. The Commission adopted the present report at its 62nd meeting, on 30 April 1970.

3/ Report of the United Nations Commission on International Trade Law on the work of its second session, Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618), paras. 185-187.

F. Decisions of the Commission

15. At the 50th meeting of the Commission, on 6 April 1970, the Chairman recalled that the Commission, at its first session, had agreed that its decisions should, as far as possible, be reached by consensus, and that it was only in the absence of consensus that decisions should be taken by a vote as provided for in the rules of procedure relating to the procedure of Committees of the General Assembly.

16. The decisions taken by the Commission in the course of its third session were all reached by consensus.

CHAPTER II

INTERNATIONAL SALE OF GOODS

A. Uniform rules governing the international sale of goods

17. Committee I considered this item in the course of its 1st to 13th, 20th and 21st meetings, held on 7 to 10, 13 to 15, 23 and 24 April 1970. The Commission considered the item at its 54th, 59th and 60th meetings, on 22, 29 and 30 April 1970.

18. The Commission had before it the report of the Working Group on the International Sale of Goods ("Working Group on Sales") on its session held at New York from 5 to 16 January 1970 (A/CN.9/35) and a note by the Secretariat suggesting alternative approaches for consideration of that report. The Commission also had before it an analysis by the Secretary-General of studies and comments by Governments on the Hague Conventions of 1964, the Uniform Law on the International Sale of Goods (ULIS) and the Uniform Law on the Formation of Contracts for the International Sale of Goods (A/CN.9/31), an analysis by the Secretary-General of replies and comments by Governments on the Hague Convention on the Law Applicable to the International Sale of Goods of 1955 (A/CN.9/33), and a proposal submitted by Spain concerning the Commission's future work on international sales.

(1) General remarks

19. One representative proposed that the Commission should establish a programme for the drafting of a new text of a uniform law on the international sale of goods. This new text should be prepared to achieve greater brevity and clarity than that of the Uniform Law on the International Sale of Goods annexed to the Hague Convention of 1964, although the existing instruments should be used as a basis. It was suggested that the new text should include not only the basic rules of sales law, but also rules on the formation of contracts and on prescription. A small drafting group should be established which would work continuously on the preparation of the new text with the assistance of the Secretariat and the International Institute for the Unification of Private Law (UNIDROIT). Some representatives supported the objective of this proposal. Other representatives opposed this proposal on the ground that it did not give adequate consideration and effect to the existing Uniform Law. Several representatives suggested that until the basic issues with respect to the Uniform Law had been discussed, it was not possible to decide whether to attempt to draft a new instrument or revise the present text. Most representatives were of the view that, if a new text should be drafted, this work would be aided by the guidance on basic questions that could be provided by the consideration of the report of the Working Group on Sales. 4/

4/ For the Commission's further consideration of this proposal, and related matters with respect to the programme of work on this subject, see paras. 68 to 72 below.

20. It was suggested by one representative that until new rules had been drafted or the existing ones amended, States should be recommended to ratify the Hague Conventions of 1964. Several representatives expressed their disagreement with that proposal.

21. The Commission decided to consider the recommendations set forth in the report of the Working Group on Sales, without prejudice to the renewal of the proposal for the drafting of a new text.

(2) ¹ Principles on choice of law in international legislation on sales (ULIS article 2)

22. The Commission considered the recommendations set forth in the report of the Working Group on Sales 5/ on the sphere of application of a uniform law. One of the issues was the following: To what extent should a uniform law govern an international sales transaction when the State of the seller or buyer (or the States of both the seller and buyer) had not adopted the uniform law? More specifically, attention was given to article 2 of ULIS. The report of the Working Group noted that this article (in conjunction with ULIS art. 1-1 (a)) directed the tribunals of contracting States to apply the Law to international sales without regard to the relationship (or lack of relationship) between the transaction and a contracting State. The Working Group recommended (in paragraph 23 of its report) that the present language of article 2 be supplanted by a new provision, as set forth in paragraph 19 of its report.

23. It was suggested during the debate that the following main approaches to the sphere of application of a uniform law might be employed: (a) the universalist system, whereby the uniform law would be applicable without regard to the relationship between the transaction and the forum; (b) the system whereby the uniform law would apply only when the places of business of both parties were in the territories of contracting States; and (c) a system which would subordinate the application of the uniform law to the rules of private international law. It was also suggested that the uniform law need not decide on a single approach, but could allow each State to choose one of various approaches to applicability.

24. The following concrete proposals were made with respect to article 2 of ULIS: (a) the retention of the present text of article 2; (b) the retention of the present text of article 2 and the expanding of the possibilities for reservations provided in article IV of the Convention; (c) the retention of the present text of article 2 and recommending the use of the reservation permitted by article III of the Convention; (d) the deletion of article 2; and (e) the formulation of a new article 2 in the light of the recommendation of the Working Group in paragraph 19 of its report.

25. After discussion of the alternatives set out in paragraph 24 above, the problem was referred to a working party (Working Party I) composed of the representatives of Argentina, Ghana, Hungary, India, Norway and the United Kingdom of Great Britain and Northern Ireland; representatives of other members of the

5/ A/CN.9/35, part II-A, paras. 10-29.

Commission and interested international organizations, including the Hague Conference on Private International Law, were invited to attend as observers.

26. Working Party I thereafter reported that it recommended that article 2 of ULIS be revised to read as follows:

"The present Law is applicable (a) irrespective of any rules of private international law when the place of business of each of the contracting parties is in the territory of a Contracting State which has adopted the present Law without any reservation which would preclude its application to the contract; (b) when the rules of private international law indicate that the applicable law is the law of a Contracting State which has adopted the present Law without any reservation which would preclude its application to the contract."

27. The Working Party also reported that the Convention providing for a uniform law should include the following:

"Any State may, at the time of the deposit of its instrument of ratification of, or accession to, the present Convention or, having become a party to the Convention, at any time after the Convention has entered into force, declare, by a notification addressed to the Government of... that, notwithstanding the provisions contained in article 2 of the Uniform Law, it will apply the Uniform Law to all contracts of sale of goods covered by the Uniform Law.

"If the declaration has been made at the time of the deposit of its instrument of ratification of or accession to the present Convention, it shall be effective from the date on which the Convention enters into force for that State.

"If the declaration has been made at any time after the Convention has entered into force, it shall be effective six months after the date of notification of such declaration."

28. The Working Party also reported its position with respect to the provisions for reservations set forth in articles II through IV of the Hague Conventions of 1964. In this regard, the Working Party recommended that: (1) article II should be retained; (2) article III should be deleted if the Working Party's above two recommendations (revision of ULIS' art. 2 (paragraph 26 above) and provision for a declaration (paragraph 27 above.)) should be adopted; (3) action on article IV should be postponed until it is seen whether and to what extent the uniform law would conflict with the 1955 Hague Convention. The Working Party noted that it had reached no conclusion as to the retention of article V of the Convention.

29. Some representatives stated that they preferred the approach of the present article 2 of ULIS. Most of the representatives stated that they agreed with the substance of the revision of article 2 proposed by the Working Party as a compromise among varying views. Some representatives also suggested that a decision on this question of scope should be postponed until after the substantive provisions of the uniform law had been decided.

30. The Commission agreed that the substance of the proposed revision of article 2 should be the basis for further work by the Working Group on Sales. It was understood that decisions as to specific provisions could be re-examined at a later stage in the work on a uniform law.

31. In the discussion of the proposed revision of article 2 of ULIS, suggestions for modifications were made. These included: (a) reversing the positions of articles 1 and 2, with the possible conversion of the present article 1 of ULIS into a definition of the term "international sale" as used in the uniform law; this definition would follow and explain the use of that term in an article based on the Working Party's revision of article 2; (b) clarifying the applicability of the uniform law when one party has two or more places of business located in different States or no place of business at all; (c) drafting paragraph (b) of the text referred to in paragraph 26 above in such a way that it would be clear from the text that it only applied in cases not covered by paragraph (a); (d) certain other detailed suggestions with respect to drafting.

32. Most of the representatives who spoke on the question supported the approach to reservations in the Convention proposed by Working Party I. One representative stated that the opportunity for the reservation provided by article III of the Convention should be retained. Several representatives suggested that, if a reservation like that provided in article IV should be retained, modifications of the present language would be necessary with respect to future adherence to conventions on private international law. One representative submitted a proposal for other modifications in article IV. It was agreed that these suggestions could be renewed if a provision along the lines of the present article IV should come under consideration.

(3) The relationship between uniform rules for international sales of goods and the proposed convention on time-limits and limitations (prescription) - (ULIS article 49)

33. The Commission took up the section of the report of the Working Group on Sales concerning the relationship between a uniform law on international sales and the proposed convention on prescription. 6/ The Commission, at its second session, had created a Working Group to take steps towards the preparation of an international convention on time-limits and limitations (prescription) in the field of international sale of goods. 7/ The Working Group on Prescription, in the report on its meeting in August 1969, noted that article 49 of the Uniform Law on Sales might be construed to provide a prescriptive limit of one year for claims by buyers based on lack of conformity of the goods 8/ and that this special

6/ Ibid., part II-C-2, paras. 48-53.

7/ Report of the United Nations Commission on International Trade Law on the work of its second session, 3-31 March 1969 (Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618)), note 3, para. 46.)

8/ A/CN.9/30, paras. 46 and 47.

provision presented a problem in view of the decision to prepare a convention with unified rules on prescription applicable to all claims by sellers and buyers arising from an international sale. The Working Group on Sales recommended (in paragraphs 52-53 of its report) that article 49 of ULIS should be deleted. In connexion with this recommendation, representatives discussed the possible interpretation that might be given to articles 39 and 49 of ULIS and the interrelation between those articles. With respect to the above recommendation for the deletion of article 49, it was agreed that this question should be considered in connexion with the report of the Working Group on Prescription.

34. The Commission decided that the subject-matter of article 49 of ULIS would come within the scope of a convention on prescription and should be omitted from the Uniform Law on Sales.

(4) The binding effect of usages (ULIS article 9)

35. Under this heading, the Commission considered the recommendation of the report of the Working Group on Sales, which examined the rules on the effect of usages. 9/

36. The report of the Working Group is concerned with article 9 of ULIS (paragraphs 74-90). The Working Group recommended (in paragraph 83 of its report) that paragraph 2 of article 9 of ULIS be revised, and proposed substitute language. 10/

37. After discussion of the problem, the Commission established a working party (Working Party II) to prepare a recommendation. Working Party II was thereupon constituted; the representatives of Australia, the Democratic Republic of the Congo, the Union of Soviet Socialist Republics and the United States of America were appointed as members; representatives of other members and of interested international organizations were invited to attend as observers.

38. Working Party II thereafter reported that it recommended that paragraphs 2 and 3 of article 9 of ULIS be revised to read as follows:

2. The usages which the parties shall be considered to have impliedly made applicable to their contract shall include any usage of which the parties are or should be aware and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved.

3. Where terms, clauses or standard forms of contracts commonly used in commercial practice are employed, they shall be interpreted according to the meaning intended to be given to them by the parties. In the absence of any such intention, they shall be interpreted according to usage as provided in the preceding paragraph.

9/ A/CN.9/35, part II-E, paras. 73-90.

10/ Ibid., paras. 85 and 86.

39. Many representatives stated that they agreed with the revised text of article 9 as recommended by Working Party II. Other representatives suggested modifications with respect to paragraph 2 of article 9.

40. It was proposed that paragraph 2 of article 9 be revised to read as follows:

The usages which the parties shall be considered to have impliedly made applicable to their contract shall include any usage which is widely known in international trade and regularly and generally observed by parties to contracts of the type involved and of which the parties to the contract either are aware or should, because it is so widely known and regularly generally observed, be have been aware.

One representative noted that the criterion set forth in article 9 of ULIS, regarding the knowledge that the parties should have of usages, was preferable to the criterion proposed in the revised text. Other representatives proposed that the words "even if of local origin" be inserted in the revised text after the words "shall include any usage".

41. One representative proposed the following wording of article 9, paragraph 2:

It is considered that the parties are impliedly bound by any usage which is widely known in international trade and which is regularly observed by parties to contracts of the type involved.

42. The Commission decided to refer the proposals referred to in paragraphs 38, 40 and 41 above, and other drafting suggestions made during the session, to the Working Group on Sales.

(5) Cancellation of a sales contract without notice to the other party:
"ipso facto" avoidance and ULIS article 62

43. The Commission considered the recommendation of the Working Group on Sales with respect to whether (or when) rights under a sales contract should be terminated automatically without notice by one party to the other. The report of the Working Group was concerned primarily with the rules on this subject in article 62 of ULIS. ^{11/} The Working Group recommended (in paragraph 103 of its report) that article 62 should be revised to make this provision on avoidance by the seller correspond with the provisions of ULIS article 26 on avoidance by the buyer and proposed a revised text designed to achieve this objective (paragraphs 98-99 of its report). The Working Group also recommended some drafting changes.

44. The Commission approved the recommendation of the Working Group (a) that the rules on avoidance by the seller (article 62) and avoidance by the buyer (article 26) should be brought into conformity, and (b) that further attention should be given to the rules and terminology with respect to avoidance of the contract.

^{11/} Ibid., part II-G, paras. 92-104.

45. In connexion with part (b) of the above recommendation, representatives expressed opinions on the following issues: (1) whether paragraph 1 of article 62 of ULIS, and the corresponding provision of article 26, are in error in providing for automatic cancellation without notification to the other party; (2) whether automatic cancellation should be excluded when the goods have been delivered to the buyer, as suggested in the proposal reported by the Working Group (paragraph 100); (3) the suitability of the expression "ipso facto avoidance" for avoidance without notification to the other party instead of "ipso jure avoidance" and the possible substitution in the English text of that first expression by "automatic cancellation" or "automatic avoidance"; (4) the clarity and practicability of the definition of "fundamental" breach of contract in article 10 of ULIS; (5) the compatibility of the rules of law on avoidance and prevailing contract practices including the relevant provisions of the ECE General Conditions as analysed in the study recently prepared by the representative of Japan.

46. The Commission approved the recommendation of the Working Group on Sales in paragraph 103 of its report and decided as follows:

The Commission:

1. Requests the Secretary-General to prepare a study of the concept of "ipso facto avoidance" for later consideration at a subsequent session of the Working Group on the International Sale of Goods;

2. Requests States members of the Commission to submit their proposals with respect to the concept of "ipso facto avoidance" to the Secretariat for consideration in the study referred to in the preceding paragraph.

(6) Time and place for inspection: time for notification of defects in delivered goods (ULIS, articles 38 and 39)

47. The Commission considered the report of the Working Group on the time and place for inspection of goods by the buyer.^{12/} In this connexion, the Working Group gave principal attention in its report (paragraph 107) to the rules of article 38 of ULIS specifying the time and place for inspection, and noted that these rules are implemented in article 39 of ULIS which, in part, provides that the buyer "shall lose the right to rely on a lack of conformity of the goods if he has not given the seller notice thereof promptly after he has discovered the lack of conformity or ought to have discovered it" (ULIS article 39-1). The Working Group recommended the revision of article 38 of ULIS in accordance with language (see paragraph 109 of its report) which was designed to make the rules more flexible and compatible with shipping practices, including new conditions presented by the development of containerized shipment (paragraphs 110-111 of its report).

^{12/} Ibid., part II-H, paras. 105-111.

48. The representatives who spoke on the point expressed the view that the text recommended by the Working Group on Sales would constitute an improvement in the language of article 38 of ULIS. Some representatives were of the view that further steps should be taken to make these rules more simple and flexible. One representative recommended the merger of articles 38 and 39 of ULIS in a single simplified provision. Another representative submitted a proposal for the merger of paragraphs 1 and 2 of article 38 into a single, flexible rule on the time for inspection. Another representative suggested that in paragraph 3 of article 38, the words "if otherwise is not agreed by the parties" be substituted for the words "the seller knew or ought to have known". He also suggested that paragraph 4 of that article should be amended to state that in the absence of agreement between the parties to the contract as to the methods of examination of the goods, the examination must be carried out in conformity with the law and, in the absence of such law, in conformity with the usages of the seller's country; attention was directed to the relevant provisions of paragraph 26 of the General Conditions of Delivery of 1968 of the Council for Mutual Economic Assistance.

49. The Commission decided to refer these proposals to the Working Group on Sales.

(7) The definition of international sale of goods for the purpose of prescribing the scope of a uniform law (ULIS article 1)

50. The Commission considered the report of the Working Group on the definition of international sale of goods, with special reference to article 1 of ULIS. ^{13/} The Working Group concluded that in general this definition was satisfactory (paragraph 41 of its report), although several delegations expressed reservations to that text (paragraph 42). One representative proposed the extension of the applicability of ULIS (article 1-1) to the sale of goods which, at the time of the conclusion of the contract, are already on the territory of the buyer. The Working Group noted further that the English text of article 1-1 (a) of ULIS ("the contract involves goods which...") might not clearly require that the contract contemplate an international shipment at the time of the making of the contract to meet this problem. The report recommended that, to conform to the French version, article 1-1 (a), in the English text, should read:

"(a) Where the contract contemplates that the goods are, at the time of the conclusion of the contract, or will be the subject of transport from the territory of one State to the territory of another;"

51. The Commission approved the report of the Working Group in so far as the Group approved the structure of article 1 of ULIS. The Commission further decided to refer recommendations for improvements in the drafting of article 1 to the Working Group on Sales.

^{13/} Ibid., part II-B, paras. 30-44.

(8) Use of general principles in interpretation (ULIS article 17)

52. Consideration was given to the report of the Working Group on Sales with regard to article 17 of ULIS, 14/ which provides that:

"Questions concerning matters governed by the present Law which are not expressly settled therein shall be settled in conformity with the general principles on which the present Law is based."

53. It was noted in the report that the Working Group had considered the following approaches: (a) approval of the present text of article 17 (paragraph 59); (b) revision to emphasize that the law should be interpreted to promote "uniformity in the law of international sales" (paragraph 63); (c) supplanting article 17 with the following: "Private international law shall apply to questions not settled by ULIS" (paragraph 66); (d) combining the rules stated in (b) and (c) above (paragraph 70).

54. Several representatives supported the retention of article 17 in its present form or with minor clarifying amendments. Some of these representatives stressed that such a provision was needed to emphasize that the uniform law was an international instrument, and indicated that it was not difficult to ascertain the "general principles" on which the law was based. Other representatives supported the revision indicated in paragraph 53 (b) above, pointing to the objective of uniformity, and mentioned that this provision might be useful to encourage reference to the interpretation given the uniform law in other States. One representative suggested that the general principles be rendered explicitly in the preamble of a future convention on the uniform law. Others suggested that reference to private international law should be added, at the end of a general rule on interpretation, to deal with the problem of gaps in the law. One representative proposed the deletion of article 17, and noted that the uniform law would be incorporated into the municipal legal system.

55. The Commission decided that the question should be referred to the Working Group on Sales for further consideration in the light of the above views and proposals.

(9) The concept of "delivery" (délivrance) and the definition of the seller's obligations

56. Consideration was given to the report of the Working Group on Sales with respect to the use of the concept of "delivery" (délivrance) in various articles of the Uniform Law on Sales. 15/

14/ Ibid., part II-D, paras. 56-72.

15/ Ibid., part II-I, paras. 112-117.

57. One representative noted that, under article 18 of ULIS, the seller "shall effect delivery of the goods", and that in article 19, paragraph 1, "delivery" (délivrance) is defined as "the handing over of goods". The seller could not be under an unqualified obligation to "hand over" the goods, since transfer of possession required the co-operation of the buyer; the seller's obligation should be limited to making the goods available to the buyer under the contract. Another representative noted, in this regard, that the study of certain of the ECE General Conditions showed that the seller's obligation was described, in the French text, in terms of the physical act of livraison rather than the legal concept of délivrance. It was also noted that, under the uniform law, even if the goods were handed over to the buyer, this might not constitute "delivery" (délivrance) if the goods did not conform to the contract.

58. Most of the representatives who spoke on the issue indicated that the concept of "delivery" (délivrance) as used in the uniform law was unduly complex and artificial and, consequently, was difficult to apply. One representative, however, was of the view that "delivery" (délivrance) was useful to avoid reference to the rules of local law.

59. The Commission approved the recommendation of the Working Group in paragraph 116 of its report and decided as follows:

The Commission:

1. Requests the Secretary-General to prepare an analysis of the use of the concept of "delivery" (délivrance) in the Uniform Law on the International Sale of Goods annexed to the Hague Convention of 1964 and to present the study to the next session of the Working Group on Sales, together with a study, being prepared by the International Institute for the Unification of Private Law, on the historical background of the use of this term in the drafts that led to the version adopted at the Hague Conference of 1964;

2. Requests the Working Group on the International Sale of Goods to give further consideration to the problems connected with the concept of "delivery" in the light of the studies referred to in the preceding paragraph, any materials submitted by members of the Commission and the observations made by representatives at the third session of the Commission.

(10) Mandatory or regulatory rules of national law with respect to consumer protection (ULIS article 5-2)

60. Consideration was given to the report of the Working Group on Sales on the extent to which ULIS might be construed to override various types of national laws for the protection of consumers. 16/

16/ Ibid., part II-J, paras. 118-124.

61. In the report, attention was directed to article 5-2 of ULIS, which specifically preserves "any mandatory provisions of national law for the protection of a party to a contract which contemplates the purchase of goods by that party by payment of the price by installments". The question was raised as to whether this specific reference preserving one type of regulatory law implied that other types of regulatory laws would be superseded. It was suggested, however, that such laws might be preserved by article 8 of ULIS, which provides that the uniform law shall not be concerned with "the validity of the contract"; on the other hand, it was noted that some regulatory laws might not be confined to the "validity" of the contract, and thus would not be preserved by article 8 of ULIS.

62. Various approaches to the problem were considered, including the deletion of article 5-2, the broadening of its scope to preserve all mandatory rules for the protection of consumers and the exclusion from the uniform law of purchases by consumers of goods for personal use. Some representatives were of the view that the last two proposals presented problems of interpretation, since it was difficult to define the excluded category, and a seller might not know the purpose for which the buyer purchased the goods. In this connexion, one representative referred to the proposed definition of consumer sales contained in paragraph 120 of the report of the Working Group on Sales (A/CN.9/35).

63. It was also noted that a provision of the uniform law that made a general reference to mandatory rules of domestic legislation would be difficult to apply, since different legal systems follow widely varying approaches to the question of whether rules are mandatory. One representative further suggested that some provisions in ULIS might be made mandatory for the purpose of protecting the consumer buyer.

64. The Commission decided to refer the problem to the Working Group on Sales to consider the problem further in the light of the observations made by representatives and any studies presented by members of the Working Group giving examples of rules regarded as mandatory.

(11) The relationship between the uniform law and national rules that contracts must be in writing (ULIS article 15)

65. This problem was considered in the light of the suggestion in the report of the Working Group (paragraphs 123-124) that a barrier to adoption of the uniform law by some countries was presented by article 15 of ULIS which provides, in part, that the contract "need not be evidenced by writing".

66. Suggestions for solving the problem included: (a) the deletion of article 15 or the provision in article 15 that only contracts in written form are binding in cases in which the national legislation of at least one of the parties made the written form mandatory; (b) provision in the convention for adherence subject to a reservation setting forth the formalities required for entering into a contract; (c) remitting the problem to the uniform law on the formation of international sales contracts.

67. The Commission decided to refer the question to the Working Group on Sales for consideration in the light of the observations presented by representatives at this session.

(12) Future work on international sales

68. The representative of Spain offered a proposal which was designed to improve working methods with reference to a revision of the uniform law for International Sales. In his view, the Commission itself was too large a body to undertake drafting. His delegation, therefore, proposed that drafting be entrusted to a small group representing the major legal systems of the world. Such a group would work continuously between the third and the fourth sessions. The draft text should be short, simple and less controversial.

69. All representatives who took the floor supported the idea that more effective working methods should be devised to increase the efficiency of the Commission and to accelerate its work on uniform rules of international sales. However, most representatives were of the opinion that the setting up of a standing drafting group was not feasible.

70. Various alternative suggestions were made. One representative, with whom many others agreed, suggested that instead of focusing attention on selected items of ULIS, the Commission should proceed in a more orderly fashion and consider ULIS in successive parts, chapter by chapter. Preliminary drafts of the Working Group would then be circulated in advance and any amendments thereto should be submitted in writing. One representative suggested that the Working Group should meet for longer periods of time; one representative suggested that the Working Group should have at least two meetings between sessions. It was also suggested that the Working Group might have a special rapporteur who had the necessary time to prepare a revised text of ULIS. Another representative emphasized that members of the Commission should not seek to impose their views on matters of detail but should confine their comments to the substance of proposed texts. One representative suggested that individual members of the existing Working Group should be assigned the task of drafting specific articles. There was general agreement that the Working Group in reporting revised provisions should make explanatory comments on each article.

71. At the suggestion of the Commission, the Working Group on Sales held a meeting to consider, in connexion with its future methods of work, the suggestions made by representatives during the discussion and, in particular, the ideas mentioned in paragraph 68 above.

72. The Commission decided, on the recommendation of the Working Group, to adopt the following working methods with respect to uniform rules of the international sale of goods:

(a) The Working Group on the International Sale of Goods, established at the second session of the Commission, should continue its work under the terms of

reference set forth in paragraph 3 (a) of the draft resolution adopted by the Commission at its second session; ^{17/} in order to accelerate its work, the Working Group should meet, for at least ten working days, before the fourth session of the Commission.

(b) Instead of considering selected items, the Working Group should consider ULIS systematically, chapter by chapter, giving priority to articles 1-17.

(c) Members of the Working Group are requested to submit their proposals in writing and in time to allow the Secretary-General to circulate such proposals prior to the meeting.

(d) Representatives of members of the Working Group, alone or in co-operation with representatives of other members, should be entrusted, if so willing, with the examination and redrafting of the articles referred to in paragraph (b) above, and any other provisions of ULIS related to those articles. Such representatives should take into consideration the relevant suggestions of Governments, the documents mentioned in the report of the Commission on the work of its third session, and the decisions taken at that session as well as the practices of international trade.

(e) The representatives entrusted with the tasks referred to in paragraph (d) above shall submit the result of their work, including explanatory comments on each article, to the Secretary-General not later than 30 June 1970. The Secretary-General is requested to transmit these reports to other members of the Working Group on Sales for comments. The comments which reach the Secretary-General before 31 August 1970 shall be transmitted to the forthcoming session of the Working Group. The Secretary-General is also requested to submit his observations to the Working Group, whose report should contain explanatory comments on each issue or article of ULIS recommended for approval.

(f) Before the new text of a uniform law or the revised text of ULIS is completed, the Working Group should only submit questions of principle to the Commission for consideration.

(g) Members of the Commission are requested to submit their proposals relating to the report of the Working Group in writing preferably in advance of the fourth session of the Commission.

(h) The Secretary-General is requested to render assistance to the Working Group in the performance of its task, in particular, by preparing, either at the request of the Working Group or on his own motion, studies and other preparatory documents (with the assistance of experts, if necessary, within the limits permitted by the budget) and by submitting proposals for consideration.

^{17/} Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618), para. 38.

B. Time-limits and limitations (prescription)

73. This subject was considered by Committee I in the course of six meetings on 16, 17 and 20 April 1970, and by the Commission at its 60th meeting, on 29 April 1970. A summary of observations made by members of the Commission and observers with respect to the actions taken by the Commission is set out in paragraphs 75 to 96 below.

74. The Commission had before it the report of the Working Group on Time-limits and Limitations (Prescription) in the International Sale of Goods ("Working Group on Prescription") on its session held at Geneva from 18 to 22 August 1969 (A/CN.9/30), and a note by the Secretariat suggesting alternative approaches for consideration of this report. The Working Group on Prescription was established by the Commission at its second session and was requested to study the topic with a view to the preparation of a preliminary draft of an international convention. 18/

(1) Working methods and general approach

75. The Working Group recommended in its report that the principles formulated in the convention "should be certain, objective and, as far as possible, should be independent of the rules of any individual legal system" (paragraph 5). Several representatives spoke in support of this approach as an aid to the clarity and practicality of the rules. Some representatives, however, observed that the study of the national rules of different legal systems in the various regions would be helpful in formulating uniform rules; it was suggested that an explanation of the reasons for choosing one approach and rejecting alternative approaches would be of assistance in securing acceptance of uniform rules that vary from those employed in national formulations. It was also observed that the approach to the work should be pragmatic and should concentrate on concrete results that would encourage international trade. It was agreed that more detailed attention to working methods should be given later and in the light of specific problems.

76. One representative suggested that the convention on prescription should not be confined to claims arising from the international sale of goods, but should extend to other international transactions such as licensing agreements. Another representative suggested that the uniform rules on prescription should be combined with the uniform rules on sales. Most representatives, however, were of the opinion that any advantages from broadening the scope of the work would be outweighed by added complications in drafting, and by increased difficulty in securing adoption of the uniform rules.

(2) Scope of the convention: the definition of international sales

77. The Working Group on Prescription recommended in its report that the convention on prescription should contain the same definition of scope as a uniform law on sales (paragraph 11).

18/ Ibid., para. 46, sub-paras. 1 and 2.

78. The Commission approved the recommendation of the Working Group referred to in paragraph 77 above. It was noted, however, that various problems with respect to the scope of the uniform law on sales had not yet been finally decided; it was understood that the present decision contemplated incorporating into the convention on prescription the rules on scope from the uniform law on sales, such as the definition of international sale and related rules, subject to later revisions that may be made in the course of further work on the uniform law on sales. It was further understood that this decision did not reach the question of choice of law. 19/

(3) Types of claims; third parties

79. Consideration was given to the recommendation in the report of the Working Group (paragraph 13) setting forth a draft provision designed to express the central idea that the convention's rules should apply only to the rights of the seller and the buyer (their successors and assigns, and persons who guarantee their performance) arising from a contract for the international sale of goods.

80. The Commission approved the above recommendation in principle. Suggestions for improvements in drafting were made. Some representatives also suggested that claims based on personal injury or physical damage, caused by the goods sold, to other property ("product liability") should be omitted from the convention. Other representatives suggested that "product liability" was given different scope and effect in different legal systems, and that an exclusion that referred to "product liability" would be difficult to construe. This problem also was referred to the Working Group.

(4) Commencement of the period of prescription: the discovery of defects or the occurrence of damage subsequent to delivery of the goods

81. Consideration was given to the recommendation in the report of the Working Group (paragraph 32) that where goods are delivered, the prescriptive period "for claims relying on a lack of conformity of the goods shall run from the date of delivery" even though the defect is discovered or damage ensues after that date.

82. Several representatives supported this recommendation, which, it was noted, supported the basic principles of definiteness and certainty to which the Working Group had referred in its general statement of principle (paragraph 5). Several other representatives expressed the view that this recommendation might be unfair to the buyer since the prescriptive period could start to run before the buyer had an opportunity to discover the defect or to make a claim. Various alternatives were suggested to meet this problem; these included starting the period from the time when the goods were put at the disposal of the buyer at the place of destination, the time when the buyer had first the opportunity to discover the defect, the time the cause of action arose, and the time when notice was given. 20/

19/ Cf. ULIS article 2; A/CN.9/30, part VII sections B and C, paras. 108-114.

20/ Cf. ULIS articles 38 and 39.

83. It was agreed that, since the danger of hardship to the buyer would be affected by the length of the prescriptive period, further attention should be given to the problem of the commencement of the period after consideration had been given to the length of the period.

84. There was general agreement that, if the recommendation of the Working Group should be accepted in principle, the period should not start from the legal concept of "delivery" (délivrance), but from a physical event, such as "handing over" the goods or when shipped goods have reached the buyer. 21/ One representative was of the opinion that a decision must be taken as to when the period of prescription should start in the case of a claim based not on a defect as to the quality of the goods, but on the failure of the goods to comply with the contract in respect of quantity, completeness or variety of the goods.

(5) Length of the prescriptive period: the basic rule

85. Consideration was given to the recommendation of the Working Group in its report that a single basic period should govern the claims by both parties to the contract, and that the period should be within the range of three to five years (paragraphs 49-50).

86. Nearly all of the representatives favoured a period within the range of three to five years. Many representatives favoured the three-year period partly to promote the settlement of disputes promptly and before the loss of evidence, and partly to protect a seller from late claims after his right to recover from his supplier had been barred by a shorter period under domestic law. Many other representatives expressed the view that a five-year period was preferable in view of the time required for investigation, negotiation and arrangements for bringing legal action, possibly in a distant State.

87. Several of the representatives indicated that their initial preference would be affected by future decisions with respect to other provisions of the convention. Such provisions included the ability of the parties to extend the period to permit further negotiation and extensions of the period while suit was impossible or was prevented by the other party.

88. In view of the varying views on the length of the period, many representatives suggested that a questionnaire be addressed to Governments and to interested international organizations, which should include a question as to whether the period of limitation could be extended or shortened; in other words, if the period of limitation is three years, whether it could be extended up to five years and, conversely, if the period of limitation is five years, whether it could be shortened to three years. Some representatives suggested that it would be appropriate to set a period that could be extended by agreement, but could not be reduced by agreement.

21/ cf. A/CN.9/30, para. 31.

89. The Commission decided that a draft questionnaire on the length of the period and other problems should be prepared for consideration by the Working Group on Prescription at its next session, and should thereafter be addressed to Governments and interested international organizations, in order particularly to ascertain the views of those engaged in business in relation to this and any other relevant issue in accordance with the final instructions by the Working Group. The Commission consequently postponed its decision with respect to the length of the prescriptive period.

(6) Effect of a guarantee for a specified time

90. Consideration was given to the recommendation of the Working Group (in paragraph 37 of its report) that the convention include the following provision:

"Where the contract contains an express guarantee relating to the goods which is stated to be in force for a specified time, the period of limitation in respect of any action based on the guarantee shall expire one year after the expiration of such time or [3] [5] years after the delivery of the goods to the buyer, whichever shall be the later."

91. Members of the Working Group explained that, in view of the concluding phrase "whichever shall be the later", the intention was that this provision would never shorten the basic period (indicated alternatively as three or five years), at least not the period running from the time of delivery. Thus, this provision would be operative only if the period of an express guarantee expired within the last year of the basic period or subsequent to the operation of the basic period; in such cases, the provision assured an added period for asserting a claim. The question was raised as to whether this intent had been clearly expressed. Attention was also called to certain drafting questions noted by the Working Group (in paragraph 38 of its report).

92. It was suggested that the added period should be two years rather than one, in view of the extensive investigation and testing that may be required in sales of industrial plants and heavy machinery, although a one-year period might be acceptable to the sale of goods like automobiles to which many representatives made reference. Another suggestion was that the added period should be the same as the basic period (three or five years).

93. The recommendation of the Working Group was accepted in substance by most representatives. It was understood that the Working Group would consider the suggestions made in the course of the discussion. One representative questioned whether, in the interest of simplicity and to avoid overly long prescription periods, the proposed provision could not be omitted altogether.

(7) Interruption of the period by acknowledgement of the debt

94. Consideration was given to the recommendation of the Working Group (in paragraph 74 of its report) that, if the debtor acknowledges the debt, the prescriptive period would start to run afresh from the date of acknowledgement.

The Commission accepted this recommendation in principle; attention was directed to discussion in the report of certain related questions, including whether the acknowledgement must be in writing (paragraph 77) and whether a part payment would have the same effect as an acknowledgement (paragraph 81).

(8) General comments on the report of the Working Group

95. Since there was insufficient time for separate debate on all of the other recommendations of the Working Group, general discussion was invited with respect to the remaining parts of the report. Representatives made comments with respect to various problems including: the effect of impossibility or force majeure (paragraphs 63-66); the legal action necessary to interrupt the prescriptive period (paragraphs 82-89); the applicability of the convention to actions to enforce judgements (paragraph 62); and the effect of fraud (paragraphs 67-70).

(9) Programme for completion of the work

96. Consideration was given to the recommendation in the report of the Working Group (paragraphs 125-126) and to the note by the Secretariat.

97. The Commission decided to request the Working Group to meet to prepare a tentative draft convention for submission to the Commission at its fourth session. It was further decided that consideration should be given to the appropriate time and place for a meeting in the light of the convenience of the members and the availability of conference services. The Commission further decided to request the Secretary-General to prepare, in advance of the session, a draft questionnaire on the length of the prescriptive period and other related problems and a working paper analysing the problems raised by the discussion at the present session.

C. General conditions of sale and standard contracts

98. The subject of general conditions of sale and standard contracts was considered by Committee I in the course of its 13th meeting, held on 15 April 1970, and by the Commission in the course of its 60th meeting, on 29 April 1970.

99. The Commission had before it the report of the Secretary-General entitled "General conditions of sale and standard contracts" (A/CN.9/34) concerning the implementation of the Commission's decision at its second session.

100. It was suggested during the debate that the regional economic commissions should be encouraged to formulate new general conditions which would satisfy the needs and interests of the region.

Decision of the Commission

101. On the suggestion of the Chairman, at its 13th meeting, on 15 April 1970, the Committee approved a recommendation for submission to the Commission.

102. The Commission, at its 60th meeting, on 29 April 1970, considered the recommendation of Committee I and adopted unanimously the following decision:

The Commission:

Requests the Secretary-General:

(a) To continue with the programme of implementation of the Commission's decision made at its second session, 22/ and to submit to the fourth session of the Commission a progress report thereon including, if possible, an analysis of the comments made by the regional economic commissions and by States on the Economic Commission for Europe General Conditions, the General Conditions of 1968 of the Council for Mutual Economic Assistance and Incoterms, 1953;

(b) To commence a study on the feasibility of developing general conditions embracing a wider scope of commodities. The study should take into account, inter alia, the conclusions in the report, referred to in paragraph 1 above, and the analysis of the Economic Commission for Europe General Conditions to be submitted by the representative of Japan.

22/ Official Records of the General Assembly Twenty-fourth Session, Supplement No. 18 (A/7618), para. 60.1.

CHAPTER III

INTERNATIONAL PAYMENTS

A. Negotiable instruments

103. The subject of the harmonization and unification of the law of negotiable instruments was considered by Committee II in the course of four meetings, held on 14, 15 and 27 April 1970, and by the Commission in the course of its 58th meeting on 28 April 1970. A summary of the observations made by members of the Commission and by observers during those meetings is set out in paragraphs 105 to 116 below.

104. The Commission had before it a report of the Secretary-General entitled "Analysis of the replies received from Governments and banking and trade institutions to the questionnaire on negotiable instruments used for making international payments" (A/CN.9/38). That report analyses the observations of seventy-eight respondents regarding the present methods and practice for making and receiving international payments and the problems encountered in settling international transactions by means of negotiable instruments.

105. The observer of the Organization of American States (OAS) informed the Commission that the Council of OAS had requested the Inter-American Juridical Committee to make a study on negotiable instruments and to prepare a draft convention on the subject. The Juridical Committee had under consideration a draft uniform law on negotiable instruments prepared by the Institute for Latin American Integration, an agency of the Inter-American Development Bank; it had decided to concentrate its study, for the time being, on cheques and bills of exchange.

106. The Commission was of the opinion that the questionnaire and the analysis of the replies thereto, prepared by the Secretariat in consultation with interested international organizations, constituted an important contribution to the first stage of its work in respect of negotiable instruments. In this connexion, the Commission reaffirmed the opinion expressed by it at its second session that seeking the views and active support of banking and trade institutions was a prerequisite to any final decision regarding the desirability of unification and its possible scope.

107. With respect to chapter I of the report, containing information on the current practices followed in making and receiving international payments, several representatives referred to the significant changes which had taken place in banking practice in the last two decades as a result of the increased use of telegraphic and cable transfers and the development of computer techniques. These representatives qualified their statements by observing that such new practices and techniques would not replace the use of commercial paper; bills of exchange would continue to play a vital role, particularly in credit transactions; and, where the transfer method was used, there was frequently an underlying transaction involving the use of a negotiable instrument. The view was expressed, however, that the method of payment by telegraphic and cable transfers and by payment orders had, in the context of international transactions, become sufficiently important to justify a separate inquiry and study by the Secretariat. Accordingly, some representatives who commented on this aspect of international payments suggested

that the Secretariat should study those new payment devices and the problems which had arisen in their use. It was observed that a study by the Secretariat of the nature and extent of international payment transfers might indicate whether there was in this respect a need for the establishment and acceptance by banks of uniform contractual arrangements or guides to practice, designed to mitigate disputes and practical problems.

108. With respect to chapter II of the report, concerning problems encountered in making and receiving international payments by means of negotiable instruments, several representatives noted that the analysis contained evidence to suggest that the task of traders and bankers would be simplified if uniformity were to be achieved in respect of the rules relating to the formal requisites of negotiable instruments, forgery, protest and notice of dishonour (including the formalities of protest and the time-limits within which protest must be made or notice be given), and the manner of proof of non-acceptance or non-payment.

109. The view was expressed that uniform contractual arrangements between banking institutions, such as the Uniform Customs and Practice for Documentary Credits and the Uniform Rules for the Collection of Commercial Paper, while useful for defining the relationships between banks and their customers, were not designed to remove difficulties arising from divergencies between national laws.

110. The view was also expressed that the Secretary-General's analysis of the replies regarding problems encountered would be of great use to those States which intended to review their legislation.

111. With respect to the alternative approaches to the harmonization and unification of the law of negotiable instruments in the context of international payments, suggested in chapter IV of the report as possible subjects for further study by the Secretariat, several representatives reiterated the opinion, already expressed at the second session of the Commission, that it would be impracticable, at the present stage, to attempt to revise the Geneva uniform laws on cheques and bills of exchange in a way that would be acceptable to both civil law and common law countries. Some representatives stressed that it was important for the Commission to establish a clear distinction between negotiable instruments law governing internal payment transactions and rules applicable to instruments used in international transactions. Therefore, the Commission's current study should relate to the possibility of establishing unified rules used for international payments only, and it should be left to States, individually or on a regional basis, to determine whether modifications were called for in their national legislation.

112. The Commission was unanimous in considering that the only viable approach at the current stage was for it to focus its work on a convention setting forth rules that would be applicable to a special negotiable instrument for use in international transactions. The uniform rules set forth in such a convention would only be applicable to an instrument bearing a heading indicating that it was subject to the rules of the convention. The use of the instrument would be optional.

113. The view was expressed that the Commission's study should in no way prejudice the ultimate form of the instrument or the scope of the rules applicable to it. For example, it was suggested that the instrument in question, although likely to incorporate the main elements of the traditional negotiable instrument,

possibly might not be a negotiable instrument in the current meaning of the term, that is, its negotiability might be restricted in one way or another.

114. In the view of several representatives, the approach advocated by the Commission would have the added advantage of enabling developing and newly independent countries that had not taken part in the shaping of negotiable instruments law to participate in the development of new rules.

115. The Commission expressed the opinion that its study on uniform rules for negotiable instruments for international transactions might make it necessary for the Secretary-General to address supplementary questions to Governments and banking and trade institutions; those questions should relate to the possible content of the rules applicable to such an instrument and, in particular, elicit comments regarding the specific rights and liabilities of the parties to an instrument.

116. The view was expressed that the co-operation with interested international organizations had proved eminently successful and that such co-operation should be intensified and, when possible, expanded.

Decision of the Commission

117. At its 15th meeting, on 27 April 1970, Committee II approved a recommendation for submission to the Commission.

118. The Commission, at its 58th meeting, on 28 April 1970, considered the recommendation of Committee II and adopted unanimously the following decision:

The Commission:

Requests the Secretary-General:

(a) To complete the analysis of the comments made by Governments and banking and trade institutions regarding problems encountered in settling international transactions by means of negotiable instruments, by including the replies that were received after the report of the Secretary-General had been drawn up;

(b) To prepare a detailed analysis of the comments made by Governments and banking and trade institutions, in response to the questions set out in the annex to the Secretary-General's questionnaire, regarding the possible content of new rules applicable to a special negotiable instrument for optional use in international transactions, and to address, if deemed necessary, supplementary questions to Governments and banking and trade institutions;

(c) To submit these analyses to the fourth session of the Commission;

(d) To hold further consultations with interested international organizations in carrying out the work.

B. Bankers' commercial credits

119. The subject of bankers' commercial credits was considered by Committee II in the course of five meetings, held on 13, 15, 16, 23 and 27 April 1970, and by the Commission in the course of its 57th meeting, on 27 April 1970. A summary of the observations made by members of the Commission and by observers during those meetings is set out in paragraphs 121 to 124 below.

120. The Commission had before it a report of the Secretary-General entitled "Bankers' commercial credits" (A/CN.9/44).

121. It was stated on behalf of the International Chamber of Commerce that the ICC had appointed a working party for the revision of the 1962 version of the Uniform Customs and Practice for Documentary Credits ("Uniform Customs (1962)").

122. Several representatives, while considering that Uniform Customs (1962) was of great importance in international trade transactions, expressed the opinion that certain of the rules were subject to divergent interpretations and that the 1962 version did not adequately deal with certain aspects, such as conditional payments under the documentary credit system.

123. The Commission welcomed the work of revision of the 1962 version to be undertaken by ICC. At the same time, it felt that, in view of the widespread use of Uniform Customs (1962), a procedure should be developed that would permit interested circles in countries not represented in ICC to make observations on the operation of Uniform Customs (1962), so that these could be taken into account by ICC. The Commission was agreed that the Secretary-General should be requested to invite Governments and banking and trade institutions to submit such observations as they might wish to make on Uniform Customs (1962) for transmission to ICC. The view was also expressed that ICC should be invited to submit the revised rules to a future session of the Commission before their final adoption by ICC, since this would prepare the ground for a possible decision by the Commission to commend the use of the third revision of Uniform Customs in relation to transactions involving the establishment of a documentary credit.

124. Several representatives considered that it would be in the interest of the work of revision to be carried out by ICC and of the ultimate adoption of the third revision of the Uniform Customs by the greatest possible number of banking institutions, if ICC were to devise a procedure whereby countries not represented in ICC could participate in the work of revision. It was stated on behalf of ICC that this possibility would be given the fullest consideration.

Decision of the Commission

125. At its 14th meeting, on 23 April 1970, Committee II approved a recommendation for submission to the Commission.

126. The Commission, at its 57th meeting, on 27 April 1970, considered the recommendation of Committee II and adopted unanimously the following decision:

The Commission:

Requests the Secretary-General:

(a) To inform Governments and interested banking and trade institutions that the International Chamber of Commerce intends to revise the 1962 version of the Uniform Customs and Practice for Documentary Credits (Uniform Customs (1962));

(b) To invite these Governments and institutions to communicate to the Secretary-General for transmission to the International Chamber of Commerce their observations on the operation of Uniform Customs (1962), so that these observations may be taken into account by the International Chamber of Commerce in its work of revision;

(c) To invite the International Chamber of Commerce to submit to a future session of the Commission, for consideration, the proposed revised text of Uniform Customs.

C. Guarantees and securities

127. The subject of guarantees and securities was considered by Committee II in the course of seven meetings, on 13, 15, 16, 20, 23 and 27 April 1970 and by the Commission in the course of its 57th and 58th meetings on 27 and 28 April 1970. A summary of the observations made by members of the Commission and by observers during those meetings is set out in paragraphs 130 to 136 below.

128. The Commission had before it the report by the Secretary-General entitled "Preliminary study of guarantees and securities as related to international payments" (A/CN.9/20 and Add.1). The Commission also had before it a proposal, submitted by Hungary to the second session of the Commission, concerning the preparation of uniform rules and practice relating to bank guarantees (A/CN.9/L.13), a note by the Secretary-General reproducing the observations received from members of the Commission on the aforementioned report of the Secretary-General (A/CN.9/45 and Add.1), and a note by the Secretary-General reproducing the report submitted by the International Chamber of Commerce on the subject of bank guarantees (A/CN.9/37).

129. The Commission decided to consider guarantees and securities separately and in turn.

(1) Guarantees

130. There was general agreement that work on the subject of guarantees should be concentrated, for the time being, on the problems that arise in the context of guarantees where the guarantor is a bank or other financial institution. The view was expressed that the lack of standardization in respect of clauses inserted in contracts of guarantee and in respect of the designation of such guarantees often gave rise to difficulties. Thus it was not always clear what was the extent of the obligation of the guarantor, and in such cases the liability of the parties involved was difficult to determine. Other problems were said to have arisen in respect of the expiry date of a bank guarantee when no such date was included in the contract, the question of the applicable law, the influence of exchange control

regulations that might result in the inability of the guarantor to transfer funds abroad in favour of the beneficiary, and the effect of force majeure on the obligations under a contract of guarantee. For these reasons, the Commission advocated that a study should be undertaken of the legal nature of guarantees of payment, that unified rules for such guarantees should be drawn up, and that standard forms should be prepared of different types of bank guarantees that could be used in the context of international transactions.

131. Several representatives pointed out that the work of the International Chamber of Commerce, as evidenced by its report to the Commission, was concerned mainly with tender guarantees, performance guarantees and repayment guarantees, and suggested that the ICC's study should be expanded to include guarantees of payment which were of particular importance for exporters of goods.

132. It was pointed out on behalf of the International Chamber of Commerce that it would probably not be possible to draw up the same set of rules for the many types of guarantees in existence and that ICC had therefore concentrated its study on those types of guarantees where the need for remedial action appeared to be greatest. In this connexion, one representative expressed the opinion that there were certain basic rules common to all types of bank guarantees and that it would be advantageous to establish such rules. The suggestion was made that the Commission might at some stage wish to ascertain what types of guarantees were used in connexion with international transactions and what were the most troublesome problems in respect thereof.

133. The Commission noted that only the banking and trade institutions in countries represented in ICC had received the ICC questionnaire on performance guarantees, tender guarantees and repayment guarantees and that some of these institutions had already responded to it. In view of the widespread use of such guarantees in international transactions, the Commission was of the opinion that it was important that ICC should also take into account the observations which Governments might wish to make and the views and practices of interested banking and trade institutions not represented in ICC. For these reasons, the Commission agreed to request the Secretary-General to address the questionnaire of ICC to Governments and also to banking and trade institutions in countries not represented in ICC.

134. With respect to guarantees of payment, the Commission was of the opinion that ICC should be invited to draw up a further questionnaire relating to that type of guarantee which would be circulated by the Secretary-General to Governments and banking and trade institutions. In addition, the Secretary-General should be requested to prepare a compilation of the replies to that questionnaire and to submit it to the fourth session of the Commission.

135. The Commission was of the opinion that ICC should be invited to submit to future sessions of the Commission reports on the progress made by it in the matter of bank guarantees and that, before any final decision would be taken by ICC regarding the standardization of practice in the field, the Commission should have the opportunity to consider the course of action which ICC will propose.

136. Several representatives considered that it would be to the benefit of the studies of ICC in respect of bank guarantees, if ICC were to devise a procedure whereby countries not represented in ICC could be associated with this work. It was stated on behalf of ICC that this possibility would be given the fullest consideration.

Decision of the Commission

137. At its 14th meeting, on 23 April 1970, Committee II approved a recommendation for submission to the Commission.

138. The Commission, at its 57th meeting, on 27 April 1970, considered the recommendation of Committee II and adopted unanimously the following decision:

The Commission:

Noting that the International Chamber of Commerce is likely to be ready to expand the scope of its inquiry and study on bank guarantees,

Requests the Secretary-General:

(a) In respect of performance guarantees, tender guarantees and repayment guarantees, to address the questionnaire of the International Chamber of Commerce to Governments, and also to banking and trade institutions in countries not represented in the International Chamber of Commerce, and to transmit to it the observations so received;

(b) In respect of guarantees of payment,

(i) To invite the International Chamber of Commerce to prepare a questionnaire on the subject;

(ii) To address such a questionnaire to Governments and to banking and trade institutions, and to transmit the observations so received to the International Chamber of Commerce;

(iii) To prepare a compilation of the observations received in response to the questionnaire and to submit it to the fourth session of the Commission;

(c) In future, to invite the International Chamber of Commerce to submit to the Commission, for consideration, reports on the progress made by it and on its proposed action in the matter of bank guarantees.

(2) Securities

139. It was generally agreed that the great diversity of the laws relating to security interests in goods was one of the main reasons why the use of security interests in international transactions appeared to be limited. The representatives who spoke on the subject noted that security interests were usually governed by the lex situs, and that property encumbered by such interests would not normally be moved from one jurisdiction to another. Therefore, conflict of law problems were not likely to occur with great frequency. These representatives noted, however, that exporters, wishing to secure the unpaid purchase price for goods sold by them to a foreign buyer, had a clear interest in being informed about their rights under the foreign law vis-à-vis the foreign buyer and third parties. Similarly, lending institutions would wish to know what devices to secure the loan were available in the country of the borrower.

140. The Commission was of the opinion that it should exclude from its consideration security interests in ambulatory chattels, such as ships and aircraft, that had already been the subject of international agreements.

141. The Commission agreed that, at the present time, its work should be concentrated on obtaining information about the national legal rules on security devices relevant to international transactions, and on the dissemination of such information.

142. Several representatives referred to the use of trust receipts in respect of transactions under which a lender who has no prior title in goods obtains a lien on those goods for the purpose of securing a loan. It was stated that, in the use of this trust receipt, the possession of the goods remained with the borrower, and that the borrower was empowered to sell the goods clear of the lien, but was required to turn over all or a part of the proceeds of the sale to the lender. Some representatives advocated that the Secretariat should make a study of the subject of trust receipts. Other representatives were of the opinion that this device, accepted in certain common law jurisdiction, could not easily be received into civil law systems. Still other representatives pointed out that trust receipts were usually held by a lending bank in the country of the debtor and therefore seldom gave rise to problems internationally.

143. Reference was made during the discussions to conditional sale contracts by virtue of which the seller secures payment of the purchase price by retaining title to the goods sold until the full purchase price is paid. It was observed that an advantage of a credit granted directly by the seller to the buyer would be that the cost of the credit might be considerably lowered. The suggestion was made that the Secretariat should make a study of the rules of the principal legal systems with respect to this type of sale contract, having regard to existing studies on the subject.

Decision of the Commission

144. At its 15th meeting, on 27 April 1970, Committee II approved a recommendation for submission to the Commission.

145. The Commission, at its 58th meeting, on 28 April 1970, considered the recommendation of Committee II and adopted unanimously the following decision:

The Commission:

Requests the Secretary-General:

(a) To invite Governments to submit information on security interests in goods, under their national laws and practice, that are relevant to international transactions - such information to relate to the main characteristics of each security device and the legal effects it entails;

(b) To make the information so received available to the Commission at its fourth session;

(c) To make a study of the rules of the principal legal systems concerning the conditional sale contract and the trust receipt, having regard to existing studies on the subjects.

CHAPTER IV

INTERNATIONAL COMMERCIAL ARBITRATION

146. The subject of international commercial arbitration was considered by the Commission at its 52nd, 53rd and 60th meetings, on 21 and 29 April 1970.

147. The Commission had before it a preliminary report on international commercial arbitration (A/CN.9/42) by Mr. Ion Nestor (Romania), the Special Rapporteur appointed by the Commission at its second session, and a note by the Secretary-General concerning the United Nations Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (A/CN.9/49 and Add.1).

148. The Special Rapporteur explained the manner in which he intended to pursue his study of international commercial arbitration, and referred to the problems, set out in paragraph 74 of his preliminary report, which he intended to study in his final report with a view to ascertaining whether they were appropriate for further attention and action by the Commission. The Special Rapporteur further stated that he expected to be able to submit his final report to the fifth session of the Commission.

149. The representatives who spoke on the subject commended the Special Rapporteur's preliminary report, and expressed their appreciation for his efforts. There was general agreement that the Special Rapporteur's mandate should be extended to the fifth session, at which he would present his final report, and that every assistance in gathering materials should be given him by the members of the Commission and the Secretariat.

150. The view was generally held that the Special Rapporteur, in completing his study, should consider which of the problems set out in paragraph 74 of his preliminary report offered sufficient indication that they could be successfully resolved within the near future to justify undertaking work at the present time. A number of representatives offered suggestions in this regard for consideration by the Special Rapporteur. The view was expressed that it was desirable that the final report should also deal with the problem of the uniform application of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. It was further stated that the report should analyse the causes of the absence of uniformity and what measures could be taken to ensure uniform application of the Convention. Some representatives stated that the problems should be ranked in terms of the possibility of reaching a solution to them rather than in terms of importance. One representative suggested that the Special Rapporteur take into consideration for his further work the rules of the Inter-American Commercial Arbitration Commission.

151. Several representatives expressed the opinion that uniform rules on international commercial arbitration should be prepared, which would become the subject of an international convention. The organization of a world-wide system of international commercial arbitration was also suggested. Other representatives were of the view that, instead of drafting a new convention, the Commission should concentrate on making the existing formulation more acceptable and should seek to

ascertain why certain conventions, such as the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 and the European Convention on International Commercial Arbitration of 21 April 1961 have not been adopted by a greater number of countries.

152. It was suggested that consideration should be given to the unification and simplification of national rules concerning the enforcement of arbitral awards and the limitation of judicial control over arbitral awards, including the reduction of means of recourse against enforcement.

153. Some representatives expressed the view that the Commission should promote the organization of new arbitration centres in developing countries and the rendering of technical assistance in this field. It was suggested that encouragement be given by the Commission to the Economic Commission for Africa and the Organization of African Unity for the creation of an African Arbitration Association, which would have panels of African arbitrators. The widespread inclusion of Africans as arbitrators in arbitral tribunals involving trade with African countries was also mentioned as means for promoting international commercial arbitration in Africa.

154. Some representatives stated that the use of arbitration was impeded by its high cost, and suggested that work be done towards stabilizing such expense.

155. A number of representatives indicated the progress made in their respective countries toward adherence to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. These statements were made in connexion with the decision of the Commission at its second session that the 1958 Convention should be adhered to by the largest possible number of States. 23/

Decision of the Commission

156. The Commission, at its 60th meeting, on 29 April 1970, unanimously adopted the following decision:

The Commission:

Unanimously expressing its appreciation to the Special Rapporteur, Mr. Ion Nestor (Romania), for his preliminary report,

1. Decides:

(a) To extend the mandate of the Special Rapporteur to the fifth session of the Commission;

(b) To request the Special Rapporteur to take into consideration the suggestions made by members of the Commission and to submit his final report to the fifth session of the Commission;

23/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618), para. 112.

(c) To request the members of the Commission and interested intergovernmental and international non-governmental organizations to assist the Special Rapporteur in his task by giving him information on existing laws and practices in the field of international commercial arbitration;

(d) To request the Secretary-General to arrange, if possible, for the reimbursement of the Special Rapporteur for his expenses in gathering, translating and reproducing materials for his report;

2. Reaffirms the opinion expressed at its second session that the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 should be adhered to by the largest possible number of States.

CHAPTER V

INTERNATIONAL LEGISLATION ON SHIPPING

157. The subject of international shipping legislation was considered by Committee II in the course of two meetings, on 10 April 1970, and by the Commission in the course of its 59th meeting, on 29 April 1970. A summary of the observations made by members of the Commission and by observers during those meetings is set out in paragraphs 158 to 165 below.

158. Some representatives stated that it would have been preferable if the UNCITRAL Working Group on International Shipping Legislation, set up by the Commission at its second session, had been convened before the Commission's third session. In their opinion, it would have been consistent with the decision taken by the Commission at its second session for the Secretary-General to have convened the Working Group on his own initiative, without prior consultation with its members. It was also observed by other representatives, however, that under the circumstances a meeting of the Working Group prior to the third session would not have furthered the Commission's work in the field.

159. In the view of the representatives who spoke on the subject, a rational approach to the working relationship between UNCITRAL and UNCTAD was essential. These representatives were of the opinion that the primary task of UNCTAD was to deal with the economic and financial aspects of shipping legislation, providing the Commission with information which would enable it, where appropriate, to prepare uniform rules in the field. In this connexion, one representative expressed the view that the Commission should suggest to UNCTAD the general nature of the information it needed, and request the Conference to provide information on the financial and economic consequences of changes in existing international legislation. Another view was that UNCTAD should be invited to exclude all legal matters from its programme of work. If this were not done, endless conflicts would ensue and, in that event, it would be preferable if the Conference were to deal with both the legal and economic aspects of international shipping legislation.

160. The view was generally held that UNCITRAL had a significant role to play in the field of international shipping legislation. It was stated, on behalf of the African, Asian and Latin American members of the Commission, that the Commission should reaffirm that international shipping legislation was a priority topic in its work programme. It was the view of these members that the UNCITRAL Working Group should be convened at least prior to the fourth session of the Commission.

161. Several representatives urged the Commission to bear in mind that certain organizations, in addition to UNCTAD, were active in the field and that co-operation with them should be maintained.

162. Other representatives were of the opinion that, in view of the fact that UNCTAD is already working on the topic of bills of lading and that progress is expected to be slow in this complex field, UNCITRAL could examine closely related topics in the field, such as charter parties, the obligations and duties of the shipper before and after the cargo has been unloaded, container shipping and the

powers of shipping agents. The Commission would thus avoid duplication of effort and, on the other hand, it would not be virtually abandoning a priority field by waiting until the UNCTAD Working Group had completed its study.

163. It was stated on behalf of UNCTAD that it had prepared a questionnaire on bills of lading to be addressed to Governments, insurance associations, carriers and shippers, in order to obtain information regarding the existing problems in the area. A number of experts and consultants had been engaged by UNCTAD to assist it in this work.

164. A meeting of the Working Group on International Shipping Legislation was convened during the third session. The Chairman of the Working Group, Mr. E. Cornejo Fuller (Chile), reported to the Commission that the Group had agreed to the following arrangements: (a) the Chairman of the Working Group would represent UNCITRAL at the UNCTAD Working Group meeting even if Chile were not re-elected to the Commission; and (b) the election of an alternate to the Chairman would be postponed in view of the Chairman's firm intention to attend the UNCTAD Working Group meeting; and (c) should it become necessary to elect an alternate to the Chairman, the Working Group would be convened in New York from among the permanent missions of the members of the Group.

165. The Commission was of the opinion that alternates to those members of the Working Group on Shipping whose membership in the Commission is due to expire in 1970 should be appointed for reasons of continuity of work. The Commission appointed Kenya as the alternate for the United Arab Republic; the Democratic Republic of the Congo as the alternate for Ghana; Australia as the alternate for the United Kingdom of Great Britain and Northern Ireland; the United States of America as the alternate for Italy; Hungary as the alternate for the Union of Soviet Socialist Republics; and Mexico as the alternate for Chile.

Decision of the Commission

166. The Commission, at its 59th meeting, on 29 April 1970, adopted unanimously the following decision:

The Commission:

Decides:

1. To request the Chairman of the Working Group on International Shipping Legislation to attend, as the Special Representative of the Commission, the session of the United Nations Conference on Trade and Development Working Group on Shipping Legislation to be held at Geneva in December 1970 or February 1971;

2. To request the Special Representative:

(a) To observe the session of the Working Group on Shipping Legislation of the United Nations Conference on Trade and Development;

(b) To inform that Working Group of the course of the discussion in the Commission at the present session;

(c) To express the Commission's desire to avoid duplication of work and to strengthen the close co-operation and effective co-ordination between the Commission and the United Nations Conference on Trade and Development in making progress in the study of shipping legislation, and invite their views on how this objective might best be achieved;

(d) To submit a report on the session of the Working Group of the United Nations Conference on Trade and Development to the Commission's Working Group;

3. That, at the request of the Special Representative, the Chairman of the third session of the Commission shall request the Secretary-General to convene a meeting of the Working Group on Shipping, it being understood that duplication between the Working Groups of the Commission and of the United Nations Conference on Trade and Development should be avoided;

4. That, the meeting of the Working Group shall be held in Geneva, for a period not longer than a week, after the session of the Working Group of the United Nations Conference on Trade and Development and before the opening of the fourth session of the Commission;

5. That, if the Commission's Working Group meets after 1 January 1971, its composition shall be the following:

(a) Members of the present Working Group whose membership continues, and those re-elected to the Commission;

(b) For the remaining membership of the Working Group, the alternates as elected by the Commission at its present session, who shall become full members of the Working Group and will be designated as members;

6. To request the Secretary-General to invite other members of the Commission, and intergovernmental and non-governmental organizations active in the field to be present as observers at the meeting of the Working Group;

7. That the terms of reference of the Working Group at its meeting shall be the same as were assigned to the Working Group under paragraph 3 of the resolution adopted at the second session, namely "to indicate the topics and method of work on the subject, ... giving full regard to the recommendations of the United Nations Conference on Trade and Development and any of its organs";

8. That the Working Group will submit its report to the fourth session of the Commission;

9. That the term of the Working Group on International Shipping Legislation will expire after it has submitted its report to the fourth session of the Commission, in view of the fact that it is anticipated that a new and larger Working Group will be set up at the fourth session of the Commission.

CHAPTER VI

REGISTERS AND BIBLIOGRAPHY

A. Register of organizations

167. The question of the establishment of a register of organizations was considered by Committee II in the course of two meetings, on 8 and 14 April 1970, and by the Commission in the course of its 56th meeting, on 23 April 1970. A summary of the observations made by members of the Commission and observers during those meetings is set out in paragraphs 169 and 170 below.

168. The Commission had before it the report of the Secretary-General entitled "Register of organizations and register of texts" (A/UN.9/40), and a note by the Secretariat setting out the questionnaire addressed to international organizations interested in international trade law, together with the replies of nine organizations that are currently working on one or more projects relating to topics included in the programme of work of the Commission.

169. The Commission recognized the usefulness of up-to-date information on the activities of other organizations in matters dealt with by the Commission. It considered alternative methods by which such information could be presented: (1) a permanent publication comparable to the register of texts, and (2) annual reports by the Secretary-General for the use of members of the Commission only. The view was generally held that the second alternative would be an adequate means of providing the Commission with the necessary information. It was suggested that the list of organizations that had been invited to submit information on their activities should be reviewed so as to include all international organizations that are active in the field of international trade law.

170. The Commission took note of the publication, by the International Institute for the Unification of Private Law (UNIDROIT), entitled Digest of Legal Activities of International Organizations and Other Institutions, published for the first time in 1969, which provides succinct information on the work of a number of organizations and institutions in both the private and public law sectors. The view was expressed that co-operation between the two organizations with respect to the compilation and dissemination of information on legal activities in matters included in the Commission's work programme would make the "Digest" a more useful reference document for members of the Commission and interested trade circles. The Commission was therefore of the opinion that the Secretary-General should be requested to examine with UNIDROIT the possibility of a more detailed record in the "Digest" of the activities of organizations where these activities are of special interest to the Commission.

Decision of the Commission

171. At its 7th meeting, on 14 April 1970, Committee II approved a recommendation for submission to the Commission.

172. The Commission, at its 56th meeting on 23 April 1970, considered the recommendation of Committee II and adopted unanimously the following decision:

The Commission:

Requests the Secretary-General:

(a) To submit reports to the annual sessions of the Commission on the current work of international organizations in matters included in the programme of work of the Commission;

(b) To consult with the International Institute for the Unification of Private Law on the feasibility of giving a more detailed record of activities of organizations concerning matters included in the programme of work of the Commission in the Digest of Legal Activities of International Organizations and Other Institutions published by the International Institute for the Unification of Private Law.

B. Register of texts

173. The question of the establishment of a register of texts was considered by Committee II in the course of two meetings, on 8 and 14 April 1970, and by the Commission in the course of its 57th meeting, on 27 April 1970. A summary of the observations made by the members of the Commission during those meetings is set out in paragraphs 175 and 176 below.

174. The Commission had before it the report of the Secretary-General entitled "Register of organizations and register of texts" (A/CN.9/40).

175. The Commission noted with satisfaction that the first volume of the Register of Texts would be published in the course of 1970 and that, in accordance with the request formulated by the Commission at its second session, the volume would set out the texts of conventions and other relevant instruments, and summaries of draft conventions, in the fields of the international sale of goods and international payments, and would list the titles and sources of instruments in the fields of international commercial arbitration and international shipping legislation.

176. Several representatives were of the opinion that work should be started on a second volume of the Register of Texts, containing the texts of conventions and other relevant instruments relating to priority topics not included in the first volume, and that, accordingly, the Secretary-General should be requested to report to the Commission at its fourth session on the contents of a second volume, and the financial implications thereof.

Decision of the Commission

177. At its 7th meeting, on 14 April 1970, Committee II approved a recommendation for submission to the Commission.

178. The Commission, at its 57th meeting, on 27 April 1970, considered the recommendation of the Committee II and adopted unanimously the following decision:

The Commission:

Requests the Secretary-General to submit to the Commission at its fourth session a report on the proposed contents of a second volume of the register of texts, and the financial implications thereof, for the Commission's consideration in reaching a decision concerning the publication of a second volume of the register of texts.

C. Bibliography on international trade law

179. The question of bibliographies on international trade law was considered by Committee II in the course of three meetings, on 8 and 20 April 1970, and by the Commission in the course of its 57th meeting, on 27 April 1970. A summary of the observations made by members of the Commission during those meetings is set out in paragraphs 180 to 184 below.

180. The Commission had before it a report of the Secretary-General entitled "Bibliography on international trade law" (A/CN.9/43), and samples of bibliographies on arbitration law (A/CN.9/24/Add.1) and on the international sale of goods, standard trade terms, negotiable instruments, and documentary credits and the collection of commercial paper.

181. The Commission expressed its appreciation for the assistance rendered by the Parker School of Foreign and Comparative Law of Columbia University and the work accomplished by Professor P. Herzog, of Syracuse University (New York) in the preparation of the bibliographies.

182. In considering what further work should be undertaken, the Commission was aware of certain practical and financial limitations which explained why references to publications in certain languages were not included in the bibliographies. At the same time, the Commission was of the opinion that, in order to achieve optimum usefulness, the bibliographies should include references to such publications. The Commission was also informed that it could not be assumed that further bibliographic work could be carried out without involving expenditure on the part of the United Nations.

183. The Commission therefore considered ways and means by which the bibliographies could be expanded without involving such expenditure. It was noted that extensive bibliographic materials on specific subjects were regularly being published in a number of countries, and that some universities and other institutions issued bibliographies of publications that appeared in certain languages or were related to a particular legal system. The Commission was of the opinion that the Secretary-General should investigate whether the work already done elsewhere could be utilized in the preparation of more complete UNCITRAL bibliographies. In addition, members of the Commission should be invited to explore whether research institutions in their country or region could provide references to materials appearing in their country or region. Finally, the Secretary-General should approach research institutions with a view to entrusting them with the preparation, on a voluntary basis, of bibliographies relating to subjects included in the programme of work of the Commission.

184. The Commission was of the opinion that such possibilities should be explored before requesting the General Assembly to make funds available to support further work on bibliographies.

Decision of the Commission

185. At its 13th meeting, on 20 April 1970, Committee II approved a recommendation for submission to the Commission.

186. The Commission, at its 57th meeting, on 27 April 1970, considered the recommendation of Committee II and adopted unanimously the following decision:

The Commission:

1. Requests the Secretary-General:

(a) To ascertain the extent to which current publications give bibliographical information relating to subject matters included in the programme of work of the Commission;

(b) To ascertain whether such publications could be utilized in the preparation of further bibliographies;

(c) To invite the members of the Commission to inform the Secretary-General whether they, or research institutions in their country or region, could provide bibliographies of materials relating to subject matters included in the programme of work of the Commission;

(d) To examine the possibility of entrusting to a research institution the preparation, on a voluntary basis, of bibliographies on subjects within the programme of work of the Commission; all materials received under sub-paragraph (iii) above would be transmitted to that institution;

(e) To inform the Commission of the financial implications that would be involved in the preparation of further bibliographies by the Secretariat or by the Secretariat in co-operation with a research institution.

2. Decides to consider, at its fourth session, what action it should take regarding the continuation of work on the bibliographies in the light of further information to be obtained by the Secretary-General.

CHAPTER VII

CO-ORDINATION OF THE WORK OF ORGANIZATIONS IN THE FIELD OF INTERNATIONAL TRADE LAW AND COLLABORATION WITH THOSE ORGANIZATIONS

187. The Commission noted that the General Assembly, in its resolution 2502 (XXIV), of 12 November 1969, on the report of the United Nations Commission on International Trade Law, on the work of its second session, recommended that the Commission should "continue to collaborate fully with international organizations active in the field of international trade law".

188. The Commission had before it a note by the Secretariat setting out the replies by international organizations to a questionnaire concerning their current activities in the field of international trade law. In this connexion, the Commission referred to its decision set out in paragraph 172 above, whereby the Secretary-General was requested to submit reports to the Commission at its annual session on the current work of international organizations in matters included in the programme of work of the Commission.

189. In the view of the Commission, its working methods were sufficiently flexible to ensure meaningful collaboration with international organizations in respect of the subjects included in its programme of work and to achieve any necessary co-ordination of work. In this connexion, reference was made to the arrangements whereby observers of international organizations may attend sessions of the Commission and of intersessional working groups, to the consultations that have taken place on specific subjects with interested organizations, and to the opportunity for organizations to submit suggestions to the Commission.

190. The Commission was therefore of the opinion that this pragmatic approach had produced satisfactory results and should be continued.

CHAPTER VIII

TRAINING AND ASSISTANCE IN THE FIELD OF INTERNATIONAL TRADE LAW

191. The Commission considered the question of training and assistance in international trade law at its 53rd meeting, on 21 April 1970.
192. The Commission had before it the report by the Secretary-General (A/CN.9/39), in which the Commission's decision on this subject at its second session was recalled and the steps taken to implement that decision were described.
193. The view was generally expressed that training and assistance in international trade law is of high importance and that every effort should be made to encourage activities within this area.
194. Several representatives stressed the importance of affording persons from developing countries the opportunity to benefit from fellowships granted by Governments or through the United Nations Programme of Assistance on the Teaching, Study, Dissemination and Wider Appreciation of International Law.
195. Other representatives stressed the importance of continuing the consultations regarding the establishment, in developing countries, of chairs in universities and regional institutes relating to international trade law. Similar views were expressed with regard to the organization of seminars especially devoted to the subject of international trade law. One representative proposed that the sessions of the Commission, or at least Working Group meetings, could be held in places other than New York or Geneva, thus exposing interested persons in the particular countries and regions to a more intense awareness of the work of the Commission.
196. The suggestions advanced in the report of the Secretary-General concerning the development of appropriate teaching materials in the field was supported by several representatives who considered it desirable that the Secretary-General pursue his consultations in this matter with public and private institutions working in the field of legal development and assistance.
197. Satisfaction was expressed that the "Supplement on international trade law" to the "Register of experts and scholars in international law" is being compiled.
198. The view was expressed by some representatives that the Commission should aim at the establishment of an independent programme of training and assistance rather than, as is presently the case, encouraging the inclusion of such a programme within those in existence, particularly the United Nations Programme of Assistance on the Teaching, Study, Dissemination and Wider Appreciation of International Law.
199. It was noted, however, that suggestions calling for substantial financial outlays must take into account the fact that appropriations made available for these activities were limited, and that activities could only be undertaken within the limits of available resources.

Decision of the Commission

200. The Commission, at its 58th meeting, on 28 April 1970, adopted unanimously the following decision:

The Commission:

Requests the Secretary-General to continue and intensify the activities on training and assistance in the field of international trade law undertaken pursuant to the Commission's decision at its second session, and to consult with appropriate institutions on the feasibility of developing teaching materials in the subject-matter of this field and of giving a larger share to the teaching of the law of international trade in the programme of those institutions.

CHAPTER IX

YEARBOOK OF THE COMMISSION

201. The question of the establishment of a yearbook of the Commission was considered by Committee II in the course of two meetings, on 8 and 14 April 1970, and by the Commission in the course of its 57th meeting, on 27 April 1970. A summary of the observations made by members of the Commission during those meetings is set out in paragraphs 203 to 207 below.

202. The Commission had before it the report of the Secretary-General entitled "The establishment of an UNCITRAL yearbook" (A/CN.9/32), submitted at the request of the Commission to the General Assembly at its twenty-fourth session, and an addendum to that report, which set forth the action taken by the General Assembly. A revised outline of contents for the yearbook was attached as annex I. It reflects the discussions and decisions of the Assembly at its twenty-fourth session (A/CN.9/32/Add.1).

203. The Commission noted with satisfaction that the General Assembly, by its resolution 2502 (XXIV), approved in principle the establishment of a Yearbook of the Commission and authorized the Secretary-General to establish such a Yearbook in accordance with the decisions and recommendations to be adopted by the Commission at its third session. The Commission also noted that the General Assembly requested it to consider, at the present session, the timing and content of the Yearbook in the light of the report of the Secretary-General and the discussions in the General Assembly. The Commission further noted that the General Assembly, on the recommendation of its Advisory Committee on Administrative and Budgetary Questions, had approved the appropriation of \$25,000 for the publication of the Yearbook on the assumption that the Yearbook would be published in 1970 and that the Commission would decide to include in the first volume of the Yearbook materials relating to its first three sessions. Accordingly, the Commission considered the timing and the contents of the first volume of the Yearbook.

204. The Commission was unanimous in considering that the first volume of the Yearbook should be published in 1970 and should contain the materials relating to the first three sessions of the Commission as outlined in annex I to the report of the Secretary-General on the establishment of an UNCITRAL yearbook.

205. The Commission considered the proposal of one representative for the rearrangement of part III of the outline referred to above. The Commission agreed that part III should be rearranged as follows:

A. International sale of goods:

1. Unification of substantive and choice of law rules;
2. General conditions of sale and standard contracts, incoterms and other trade terms;
3. Time-limits and limitations (prescription) in the field of the international sale of goods.

- B. International shipping legislation.
- C. International payments.
- D. International commercial arbitration.
- E. Training and assistance in the field of international trade law.

206. With regard to "Training and assistance in the field of international trade law", one representative noted that any programme to be developed under this item would be part of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, and expressed the view that it would be preferable not to include documentation on this subject in the Yearbook, since such inclusion would give the reader of the Yearbook an incomplete view of the United Nations Programme. In this connexion, it was pointed out by the representative of the Secretary-General that the Yearbook could refer to other publications and documents of the United Nations containing particulars regarding the Programme.

207. The view was expressed that the Secretary-General should have a measure of discretion in editing the Yearbook so as to keep the volume of materials within the limits imposed by the financial allocation authorized by the General Assembly.

Decision of the Commission

208. At its 7th meeting, on 14 April 1970, Committee II approved a recommendation for submission to the Commission.

209. The Commission, at its 57th meeting, on 27 April 1970, considered the recommendation of Committee II and adopted unanimously the following decision:

The Commission:

1. Requests the Secretary-General:

(a) To publish in 1970 the first volume of the Yearbook of the United Nations Commission on International Trade Law; the Yearbook should contain the materials relating to the first three sessions of the Commission, and in general follow the arrangement set out in annex I of the report of the Secretary-General on the establishment of a Yearbook, with due regard to the views expressed in the Commission during its discussion of the item;

(b) To submit to the Commission at its fourth session a report on the publication of a second volume of the Yearbook, and the financial implications thereof;

2. Decides to take its final decision concerning the contents of a second volume of the Yearbook at its fourth session.

CHAPTER X

QUESTIONS RELATING TO FUTURE WORK

210. Questions relating to future work of the Commission, including the programme of work through 1973 and certain organizational questions, were considered by the Commission at its 55th, 56th, 61st and 62nd meetings, on 22, 23 and 30 April 1970.

211. The Commission had before it a note by the Secretary-General on the programme of work (A/CN.9/46), a proposal submitted by the French delegation concerning a basic convention establishing a common body of international trade law and a note by the secretariat of UNIDROIT on the progressive codification of the law of international trade (A/CN.9/L.19).

A. Basic convention establishing a common body of international trade law

212. The representative of France introduced the proposal of his delegation and stated that it was now being submitted in detail as requested by several representatives at the second session of the Commission.

213. The representative of France explained that the basic idea of his proposal was to find a way by which unified rules for international trade would be more rapidly accepted than by the existing system of ratification of separate conventions. His proposal therefore called for the conclusion of a basic convention under which: (a) UNCITRAL would be made responsible for establishing appropriate regulations within the various branches of law concerned with international trade; (b) those regulations would constitute the common body of international trade law and, under certain conditions, would automatically enter into force in those countries adhering to the basic convention; (c) in those States, they would henceforth constitute the law applicable to international legal relations, except in so far as a State had informed the international organization that it did not accept certain provisions proposed by UNCITRAL; (d) a country which rejected or modified a provision of the convention would have to stipulate which rule of its municipal law would replace that provision.

214. Many representatives commended the French proposal. Several representatives, however, expressed doubt as to its feasibility because of its far-reaching implications. These implications, which involve, among other things, radical change in the constitutional theory and practice of many States, might discourage these States from ratifying the basic convention. These representatives, therefore, suggested that more time would be needed for a closer examination of the proposal.

215. Some representatives suggested that, at least for the present, it would be wiser to seek separate approval of unification projects after they have been completed. It was also noted that experience had shown that international conventions concluded under the auspices of the United Nations stood a better chance of acceptance and ratification by individual States than did other conventions that lacked United Nations sponsorship.

216. Several representatives, while supporting the idea of deferring consideration of the French proposal until the fourth session, expressed the hope that the representative of France would prepare a draft text of the basic convention so that their Governments might be able to assess better the practicability of the proposal.

Decision of the Commission

217. At its 61st meeting, on 30 April 1970, the Commission unanimously adopted the following decision:

The Commission:

Decides:

(a) To defer its decision on the French proposal until its fourth session;

(b) To include in the agenda of its fourth session an item concerning possible measures which may ensure that conventions drawn up by the Commission will enter into force without delay in the largest possible number of countries.

B. Progressive codification of the law of international trade

218. The Commission noted with appreciation the contents of the document submitted by the secretariat of UNIDROIT on the progressive codification of the law of international trade.

C. Planning for future work

219. The Commission reaffirmed the opinion expressed at its second session that the preparatory work, to be done by intersessional working groups, special rapporteurs and the Secretariat, should be aided by the active contribution of Governments through the submission, at the request of the Commission, of detailed information on subject matters included in the Commission's programme of work. The Commission also considered it desirable that provision should be made, where necessary, to obtain the services of consultants or organizations with special expertise in matters dealt with by the Commission.

220. The Commission also agreed that it was necessary that the Secretariat should be adequately staffed to cope with the increased work-load involved in servicing the Commission.

221. The Commission further considered that it could establish a detailed programme of work for the coming year only, and agreed that the Secretariat should prepare the necessary budget and planning estimates for subsequent years in order to enable the Commission to carry out its work in the light of the considerations set forth in paragraphs 219 and 220 above.

D. Date of the fourth session

222. The Commission decided, at its 61st plenary meeting, on 30 April 1970, that its fourth session, to be held at the United Nations Office at Geneva, should meet from 29 March to 23 April 1971.

ANNEX I

REPRESENTATIVES OF MEMBERS OF THE COMMISSION

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Asesor del Ministro de Justicia

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Attorney General's Department

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Australian Trade Commissioner

Mr. R.S. MERRILLEES
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Australian Mission to the United Nations

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Alternates

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extérieur

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Second Secretary of Embassy
Brazilian Mission to the United Nations

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ANNEX II

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Mr. Kazuaki SONO
Legal Officer
International Trade Law Branch

Mr. Gabriel WILNER
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International Trade Law Branch

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Shipping Legislation Unit

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Member of the Legal Department

Mr. David SASSOON
Member of the Legal Department

Inter-Governmental Maritime
Consultative Organization

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International Monetary Fund

Mr. Robert EFFROS
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Mr. Roland TENCONI

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Direction générale du Marché intérieur
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Inter-American Juridical Committee

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International Institute for the
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World Peace through Law Center

Mr. Leo NEVAS
Representative to the United Nations

Miss Miriam ROONEY
Representative to the United Nations

ANNEX IV

LIST OF DOCUMENTS CONSIDERED BY THE COMMISSION

A. General series

- A/CN.9/30 Report of the Working Group on Time-limit and Limitations (Prescription) in the International Sale of Goods, on its session held at Geneva from 18 to 22 August 1969
- A/CN.9/31 Analysis of the studies and comments by Governments on the Hague Conventions of 1964: report of the Secretary-General
- A/CN.9/32, Add.1 The establishment of an UNCITRAL Yearbook: report of the Secretary-General
- A/CN.9/33 Analysis of the replies and comments by Governments on the Hague Convention of 1955: report of the Secretary-General
- A/CN.9/34 General conditions of sale and standard contracts: report of the Secretary-General
- A/CN.9/35 Report of the Working Group on the International Sale of Goods on its session held at New York from 5 to 16 January 1970
- A/CN.9/36, Add.1, Corr.1 and 2^a Provisional agenda
- A/CN.9/37 Guarantees and securities (bank guarantees): note by the Secretary-General
- A/CN.9/38 International payments - negotiable instruments; analysis of the replies received from Governments and banking and trade institutions to the questionnaire on negotiable instruments used for making international payments: report of the Secretary-General

a/ In English only.

A/CN.9/39	Training and assistance in the field of international trade law: report of the Secretary-General
A/CN.9/40	Register of organizations and register of texts: report by the Secretary-General
A/CN.9/41	International legislation on shipping: report of the Secretary-General
A/CN.9/42	International commercial arbitration: note by the Secretary-General
A/CN.9/43	Bibliography on international trade law: report by the Secretary-General
A/CN.9/44	International payments - bankers' commercial credits: report of the Secretary-General
A/CN.9/45, Add.1	Guarantees and securities: note by the Secretary-General
A/CN.9/46	Programme of work through 1973: note by the Secretary-General
A/CN.9/49, Add.1	International commercial arbitration; the United Nations Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards: note by the Secretary General

B. Limited series

A/CN.9/L.19	Programme of work through 1973; progressive codification of the law of international trade: note by the Secretariat of the International Institute for the Unification of Private Law (UNIDROIT)
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C. Restricted series

A/CN.9/R.1	Time-limits and limitations (prescription) in the international sale of goods: note by the Secretariat (suggestions concerning alternative approaches for consideration of the report of the Working Group)
A/CN.9/R.2	Uniform rules governing the international sale of goods: note by the Secretariat

A/CN.9/R.3 Bibliography

UNCITRAL/III/CRP/1 Guarantees and securities (bank
guarantees): note and questionnaire
addressed by the International Chamber
of Commerce to its national committees
for its report on "bank guarantees"

UNCITRAL/III/CRP/2 Register of organizations: note by the
Secretariat

UNCITRAL/III/CRP/3 Proposal for a draft basic convention
establishing a common body of international
trade law: (submitted by France)

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