REPORT
OF THE
UNITED NATIONS COMMISSION
ON
INTERNATIONAL TRADE LAW

on the work of its second session

3-31 March 1969

GENERAL ASSEMBLY

OFFICIAL RECORDS : TWENTY-FOURTH SESSION

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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.

CONTENTS

CONTENTS (continued)

CONTENTS (continued)

INTRODUCTION

The present report of the United Nations Commission on International Trade Law is submitted to the General Assembly in accordance with paragraph 10 of section II of General Assembly resolution 2205 (XXI) of 17 December 1966. As provided in the same paragraph, this report is submitted simultaneously to the United Nations Conference on Trade and Development (UNCTAD) for comments.

The Commission adopted the present report at its 49th meeting on 31 March 1969. The report covers the second session of the Commission, which was held at the United Nations Office in Geneva from 3 to 31 March 1969.

CHAPTER I

ORGANIZATION OF THE SESSION

A. Opening and duration

1. The United Nations Commission on International Trade Law (UNCITRAL), established by General Assembly resolution 2205 (XXI) of 17 December 1966, held its second session at the United Nations Office in Geneva from 3 to 31 March 1969. The session was opened, on behalf of the Secretary-General, by Mr. Blaine Sloan, Director of the General Legal Division, Office of Legal Affairs.

2. The Commission held twenty-four plenary meetings in the course of the session.

B. Membership and attendance

3. Under the terms of paragraph 1 of section II of General Assembly resolution 2205 (XXI) the Commission consists of twenty-nine States, elected by the General Assembly. The present members of the Commission, elected by the General Assembly at its twenty-second session on 30 October 1967, are the following States: 1/

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

4. With the exception of Colombia, Congo (Democratic Republic of), Nigeria and Thailand, all members were represented at the second session of the Commission.

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

(a) United Nations organs:

Economic Commission for Europe (ECE); United Nations Conference on Trade and Development (UNCTAD); United Nations Institute for Training and Research (UNITAR).

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.

(b) Specialized agencies:

Food and Agriculture Organization of the United Nations (FAO); Inter-Governmental Maritime Consultative Organization (IMCO); International Monetary Fund (IMF).

(c) Intergovernmental organizations:

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

(d) International non-governmental organizations

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

C. Election of officers

6. At its twenty-sixth meeting on 3 March 1969, the Commission elected the following officers 2/ by acclamation:

Chairman.....Mr. László Réczei (Hungary)

Vice-Chairman.....Mr. Gervasio Ramón Carlos Colombres (Argentina)

Vice-Chairman.....Mr. Nagendra Singh (India)

Vice-Chairman.....Mr. Mohsen Chafik (United Arab Republic)

Rapporteur.....Mr. Stein Rognlien (Norway)

D. Agenda

7. The agenda of the session as adopted by the Commission at its twenty-sixth meeting, on 3 March 1969, was as follows:

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

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 to secure representation of each of the five groups of States listed in paragraph 1 of section II of General Assembly resolution 2205 (XXI) on the bureau of the Commission.

4. International sale of goods:

   (a) The Hague Conventions of 1964;

   (b) The Hague Convention on Applicable Law of 1955;

   (c) Time-limits and limitations (prescription) in the field of international sale of goods;

   (d) General conditions of sale and standard contracts;

   (e) Incoterms and other trade terms.

5. International payments:

   (a) Negotiable instruments;

   (b) Bankers' commercial credits;

   (c) Guarantees and securities.

6. International commercial arbitration:

   (a) Steps that might be taken with a view to promoting the harmonization and unification of law in this field;

   (b) The United Nations Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

7. Consideration of inclusion of international shipping legislation among the priority topics in the work programme

8. (a) Register of organizations and register of texts;

   (b) Bibliography.

9. Consideration of ways and means of promoting co-ordination of the work of organizations active in the progressive harmonization and unification of international trade law and of encouraging co-operation among them.

10. Working relationship and collaboration with other bodies.

11. Consideration of opportunities for training and assistance in the field of international trade law.

12. Consideration of the possibility of issuing a Yearbook.

13. Programme of work until the end of 1972.

14. Date of third session.

15. Adoption of the report of the Commission.

E. Establishment of two committees of the whole

8. The Commission, at its 27th meeting on 4 March 1969, 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, at its 28th meeting, on 4 March 1969, decided to refer to Committees I and II for consideration the following items:

Committee I

Item 4 International sale of goods:

(a) The Hague Conventions of 1964;

(b) The Hague Convention on Applicable Law of 1955;

(c) Time-limits and limitations (prescriptions) in the field of international sale of goods;

(d) General conditions of sale and standard contracts;

(e) Incoterms and other trade terms.

Item 6 International commercial arbitration:

(a) Steps that might be taken with a view to promoting the harmonization and unification of law in this field;

(b) The United Nations Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

Committee II

Item 5 International payments:

(a) Negotiable instruments;

(b) Bankers' commercial credits;

(c) Guarantees and securities.

Item 8 (a) Register of organizations and register of texts;

(b) Bibliography.

Item 9 Consideration of ways and means of promoting co-ordination of the work of organizations active in the progressive harmonization and unification of international trade law and of encouraging co-operation among them.

The Commission also requested Committees I and II to consider the question of co-ordination in respect of subjects referred to them. At its 34th meeting, on 17 March 1969, the Commission further referred to Committee II the question concerning the publication of a Yearbook of the Commission (item 12 of the agenda).

10. Committee I met from 6 to 24 March 1969 and held fifteen meetings. Committee II met from 6 to 20 March 1969 and held twelve meetings.

11. At its first meeting on 6 March 1969, Committee I elected unanimously Mr. Nagendra Singh (India) as Chairman and Mr. Shinichiro Michida (Japan) and Mr. Ion Nestor (Romania) as Rapporteurs for item 4 and item 6 respectively. The Committee at its eleventh meeting, following the departure from Geneva of Mr. Nagendra Singh, elected Mr. Gervasio Ramón Carlos Colombres (Argentina) as Chairman. At its first meeting, on 6 March 1969, Committee II elected unanimously Mr. Nehemias Gueiros (Brazil) as Chairman and Mr. Kevin William Ryan (Australia) as Rapporteur.

12. The Commission considered the report of Committee II at its 38th and 39th meetings, on 21 March 1969, and the report of Committee I at its 43rd, 44th and 45th meetings, on 25 and 26 March 1969. The Commission decided to include the substance of the Committee's reports in its report on the work of its second session.

F. General debate

13. The Commission decided to have a general debate on the substantive items on its agenda before the committees of the whole began their work. A summary of the observations made by representatives during the general debate on a particular item is included in the chapter relating to that item.

G. Decisions of the Commission

14. At the twenty-sixth meeting of the Commission, on 3 March 1969, 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.

15. The decisions taken by the Commission in the course of its second session were all reached by consensus. The decisions taken in respect of each substantive item are, for easy reference, set out in the final chapter of this report.

CHAPTER II

INTERNATIONAL SALE OF GOODS

A. The Hague Conventions

(1) General observations

16. It was recalled that, as a matter of principle, the Commission had a clear mandate and was therefore entirely competent to take such steps as would, in its view, further the harmonization and unification of international trade law. In this connexion, many representatives pointed out that the decision of the Commission to consider the Hague Conventions of 1964 and 1955 in no way implied that the Commission should necessarily confine itself to merely giving an opinion whether their contents were or were not satisfactory.

17. A number of representatives expressed the wish that the Commission would not create any obstacles to the ratification of the Hague Conventions. Other representatives were of the opinion that the Commission, although it wished to take full account of the work already accomplished in the field, was at liberty to chart a new course if, upon examination, the Hague Conventions proved to be unacceptable to a substantial number of States. The view was also expressed that the Hague Conventions of 1964 and 1955 should be replaced by a single instrument comprising both substantive and conflict rules of international sale. One representative stated that the unification of the law of the international sale of goods could only be effected by such a new international instrument.

(2) Hague Conventions of 1964

18. The Commission considered the Hague Conventions of 1964 relating to a Uniform Law on the International Sale of Goods and a Uniform Law on the Formation of Contracts for the International Sale of Goods (hereinafter referred to as the Hague Conventions of 1964), in the light of the note by the Secretary-General entitled "Replies and studies by States concerning the Hague Conventions of 1964" (A/CN.9/11, Corr.1 and Add.1 and 2) and a report of the Secretary-General containing an analysis of those replies and studies (A/CN.9/17). The Commission also had before it a proposal submitted by the delegation of the Union of Soviet Socialist Republics concerning the unification of rules of law regulating the international sale of goods (A/CN.9/L.9) and studies and comments on the Hague Conventions of 1964 submitted by the representatives of Hungary, Japan and the United Arab Republic.

19. The Commission considered the general aspects of the Hague Conventions of 1964 during a general debate held in the course of its 28th to 31st meetings, on 4, 5 and 6 March 1969. A summary of the observations made in the course of that debate is set out in paragraphs 21-30 below.

20. The text of the Hague Conventions of 1964 and of the uniform laws forming the annex to those Conventions were considered by Committee I in the course of its 1st to 6th and 10th meetings, held on 6, 7, 10 and 14 March 1969 (see A/CN.9/L.15, paragraphs 5-3). A summary of the comments made by members of the Commission and

observers of organizations during those meetings is set out in annex I to the present report. Committee I also considered what course of action should be recommended to the Commission in respect of the Hague Conventions of 1964 and, in general, for the purpose of promoting the progressive harmonization and unification of the law relating to the international sale of goods.

21. In the course of the discussion two main trends of opinion emerged regarding the Hague Conventions of 1964.

22. In the view of some representatives, the Conventions were suitable and practicable instruments and a significant contribution towards the unification of law. Therefore, they should not be revised before they had been put to the test in actual practice and before it was reasonably certain that a better instrument could be drawn up; in this connexion, ratification of the Conventions, even if accompanied by the reservation in article V of the Convention providing a uniform law on the international sale of goods, would be desirable. Moreover, before revising the Conventions, one should first be more or less certain that it would be possible to draft a better instrument. The view was also expressed by some representatives that any action by the Commission, other than recommending to States that they accede, might slow down the present trend towards ratification or accession. The observer of the International Institute for the Unification of Private Law (UNIDROIT) expressed the opinion that, in general, the objections to provisions of the Conventions had already been considered at the 1964 Diplomatic Conference and rejected.

23. In the view of other representatives, the Hague Conventions of 1964 did not correspond to present needs and realities and, in the interest of unification, it would be desirable to review the Conventions at an early date. Representatives sharing this view pointed out that the 1964 Hague Conference, at which the Conventions were adopted, had been attended by only twenty-eight States and that none of the developing countries had been represented.

24. Several representatives held the view that the Hague Conventions of 1964 had not taken into account the interests of developing countries. Other representatives also considered that it was essential that the legal systems and the interests of countries not represented at the Hague Conference of 1964 should from now on be taken into account.

25. Some representatives expressed the view that the Conventions embodied certain legal concepts of an artificial character which it would be difficult for some States to accept. Moreover, many provisions were aimed at facilitating trade between countries within the same region rather than between countries of different continents. Therefore, it would hardly serve a useful purpose for the Commission to recommend to States that they accede to the Convention.

26. The Observer of UNIDROIT stated that, in his view, the legal position with regard to a revision of the Hague Conventions of 1964 was that such a revision could be undertaken only by the States which had drawn up these Conventions, and that while States which had not signed the Conventions could conclude a separate agreement they had no power to amend the Conventions. In his opinion, UNIDROIT could take action only if the Conventions themselves authorized it to do so.

27. The observer of the Hague Conference on Private International Law stressed the contradictions between the system laid down in article 2 of the uniform law on the international sale of goods of 1964 and the Hague Convention of 1955. He expressed the view that any future solution in the field of the international sale of goods had to establish a co-ordination of substantive rules and rules of conflicts. In fact, the latter could not be dispensed with as long as there were States which had not accepted the new uniform law.

28. Mr. H. Scheffer, who was Secretary-General of the 1964 Hague Diplomatic Conference on the Unification of Law governing the International Sale of Goods, in a statement on behalf of the Netherlands Government, made at the invitation of Committee I, stated that the Netherlands Government, being responsible for the 1964 Conference and bound by certain obligations laid down in the final clauses of the Hague Conventions of 1964, would always be ready to lend its further assistance in this field if requested by the United Nations or other organizations.

29. Some representatives referred to paragraph 2 of Recommendation II annexed to the Final Act of the Hague Diplomatic Conference on the Unification of Law Governing the International Sale of Goods, in which the Conference recommended that UNIDROIT should establish a committee composed of representatives of the Governments of the interested States which should consider what further action should be taken to promote the unification of law on the international sale of goods. One representative also drew attention to article XIV of the Hague Convention of 1964 relating to a uniform law on the international sale of goods which provided that after the Convention had been in force for three years, any Contracting State might request the convening of a conference for the purpose of revision; that States invited to the Conference, other than Contracting States, should have the status of observers unless the Contracting States decided otherwise by a majority vote and that observers should have all rights of participation except voting rights.

30. Other representatives took the view that a new convention acceptable to all States, or at least to a majority of them, should be drawn up and opened for accession by all States which participated in international trade. The Commission should set up a body to prepare a draft of a new world-wide convention which would take account of the interests of all countries, and the United Nations should subsequently convene an international conference for the purpose of adopting such a convention.

31. In proposing that the unification of the law of the international sale of goods could only be achieved by a new convention, one representative suggested that the new convention should use, as preparatory documents, the decisions of the United Nations and its organs dealing with the normalization of trade relations and designed to eliminate colonialism and manifestations of neo-colonialism from international economic relations, the principles governing international trade relations and trade policies adopted in 1964 by UNCTAD, the general conditions of sale and model contracts prepared by the United Nations Economic Commission for Europe, the general conditions of delivery of the Council for Mutual Economic Assistance (1968), the text of the Hague Conventions of 1964 and 1955, and the acceptable rules of municipal law governing relations in respect of contracts of international sales.

(3) Hague Convention of 1955

32. The Commission considered the Hague Convention of 1955 on the Law Applicable to the International Sale of Goods (hereinafter referred to as the Hague Convention of 1955) in the light of a note by the Secretary-General containing the replies by States concerning that Convention, and the comments made by the Secretary-General of the Hague Conference on Private International Law (A/CN.9/12 and Add.1, 2 and 3). The Commission had also before it a proposal submitted by the delegation of the USSR concerning the unification of rules of law regulating the international sale of goods (A/CN.9/L.9).

33. The Commission considered the general aspects of the Hague Convention of 1955 and what future action it should take in respect of that Convention during a general debate held in the course of its 28th to 31st meetings, on 4, 5 and 6 March 1969. A summary of the observations made on the Convention in the course of that debate is set out in paragraphs 35 and 36 below.

34. The provisions of the Hague Convention of 1955 were considered by Committee I in the course of its 7th and 10th meetings, held on 11 and 14 March 1969 (see A/CN.9/L.15, paragraph 9). A summary of the comments made by members of the Commission and observers of organizations during these meetings is set out in annex II to the present report.

35. A number of representatives stressed the importance of the Hague Convention of 1955 and were of the opinion that, at least at the present stage of development of the law of the international sale of goods, conflict rules were necessary, and that for this reason the Convention served a useful purpose. Some representatives who were in favour of the preparation of a new convention that would replace the Hague Conventions of 1964, expressed the view that conflict rules should form an integral part of a new Convention on the international sale of goods. The view was also expressed that the Convention had been drawn up by a limited number of States and that it should be examined in order to ascertain whether its provisions unduly favoured the exporting countries.

36. The Observer of the Hague Conference on Private International Law stated that the Conference would welcome the views of members of the Commission which were not States members of the Conference and that if the Commission were of the opinion that the Hague Convention of 1955 should be revised, the Conference would be willing to consider that possibility.

(4) Decision of the Commission

37. At the 10th meeting of Committee I, on 14 March 1969, the representative of Hungary submitted a draft resolution on behalf of Brazil, Ghana, Hungary, India and the United States of America (A/CN.9/L.10). At the same meeting, the representative of Kenya requested that Kenya be included among the sponsors of the draft resolution. After certain amendments had been made, the draft resolution was approved by Committee I for submission to the Commission.

38. The Commission, at its 43rd and 44th meetings on 25 and 26 March 1969, considered the draft resolution submitted by Committee I. At its 44th meeting the Commission unanimously adopted the following draft resolution:

"The United Nations Commission on International Trade Law,

"Recalling General Assembly resolution 2421 (XXIII) expressing the conviction that the harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, would significantly contribute to economic co-operation between countries and, thereby, to their well being,

"Convinced that the Hague Conventions of 1955 and 1964, as a result of many years of study and research under the auspices of the Hague Conference on Private International Law and UNIDROIT, respectively, constitute an important contribution to the harmonization and unification of the law of the international sale of goods,

"Having considered the written replies from Governments to the question addressed to them by the Secretary-General, whether they intend to ratify, or accede to, the Hague Conventions of 1955 and 1964 and the reasons for their position, as well as the oral and written comments regarding the provisions of the Conventions made by members of the Commission at its second session,

"Having further considered the studies submitted by Governments on the Hague Conventions of 1964,

"Bearing in mind that seven countries have ratified the Hague Convention of 1955 and three countries the Hague Conventions of 1964,

"Noting the statements made by a number of Governments regarding their intention to adhere to the Conventions, and not wishing to delay or prevent ratification of these Conventions by the countries who may desire to do so,

"Considering, at the same time, the views expressed by a number of Governments that the Conventions in their present text, are not suitable for worldwide acceptance,

"Being of the opinion that in the establishment of generally acceptable uniform rules governing the international sale of goods the work already done in the field should as far as possible be taken into account and that duplication of efforts should be avoided through collaboration, where appropriate, with the organizations operating in this field,

"Decides:

"1. To request the Secretary-General to complete the analysis of the replies received from States regarding the Hague Conventions of 1964 (A/CN.9/17) in the light of the replies and studies received since its preparation and of the written and oral comments by members of the Commission during its second session, and to submit the analysis to the Working Group established under paragraph 3;

"2. To request the Secretary-General to prepare an analysis of the replies received from States regarding the Hague Convention of 1955 as well as of the written and oral comments by members of the Commission during its second session, and to submit the analysis to the Working Group to be set up under paragraph 3;

"3. To establish a Working Group - composed of the following fourteen members of the Commission: Brazil, France, Ghana, Hungary, India, Iran, Japan, Kenya, Mexico, Norway, Tunisia, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America - which shall:

"(a) Consider the comments and suggestions by States as analysed in the documents to be prepared by the Secretary-General under paragraphs 1 and 2 above, in order to ascertain which modifications of the existing texts might render them capable of wider acceptance by countries of different legal, social and economic systems, or whether it will be necessary to elaborate a new text for the same purpose, or what other steps might be taken to further the harmonization or unification of the law of the international sale of goods;

"(b) Consider ways and means by which a more widely acceptable text might best be prepared and promoted, taking also into consideration the possibility of ascertaining whether States would be prepared to participate in a Conference;

"(c) Submit a progress report to the third session of the Commission;

"4. To recommend that the members of the Working Group should be represented by persons especially qualified in the law of the international sale of goods;

"5. To request the Secretary-General to invite members of the Commission not represented on the Working Group, UNIDROIT, the Hague Conference on Private International Law and other international organizations concerned, to attend the meetings of the Working Group and to recommend that they should be represented by persons especially qualified in the law of the international sale of goods.

(5) Observations

39. One representative recalled his previous statement that the unification of the law of the international sale of goods could only be effected by a new international instrument comprising both substantive and conflict rules.

B. Time-limits and limitations (prescription) in the field of the international sale of goods

40. The subject of the harmonization and unification of the law on time-limits and limitations (prescription) in the field of the international sale of goods was considered by the Commission at its twenty-ninth to thirty-first meetings on 5 and 6 March 1969 during the general debate and by Committee I in the course of four meetings on 17 to 19 and 24 March 1969. A summary of the observations made by members of the Commission during those meetings is set out in paragraphs 43 and 44 below.

41. The Commission had before it a note by the Secretary-General (A/CN.9/16 and Add.1 and 2) reproducing the studies on time-limits and limitations in connexion

with the international sale of goods submitted by the Governments of Belgium, Czechoslovakia, Norway and the United Kingdom. In addition, the Secretariat of the Council of Europe had made available to the Commission a document of the European Committee on Legal Co-operation of that organization, entitled "Replies made by Governments of Member States to the Questionnaire on 'time-limits'".

42. The Commission expressed warm appreciation of the studies which had been submitted by the Governments of Belgium, Czechoslovakia, Norway and the United Kingdom. These had been of considerable help in assisting the Commission in its work.

43. The view was expressed that the harmonization of rules prescribing time-limits for asserting claims in connexion with international sale transactions presented a complex problem and that the Commission should consider whether that problem could be solved by the harmonization of conflict rules or the adoption of uniform substantive rules. It was noted in this connexion that, generally, in civil law countries the rules relating to time-limits and limitations were part of substantive law, whereas in common law countries they were considered to be part of procedural law.

44. There was a general consensus that this topic was one which could profitably be the subject of immediate work by the Commission. The studies revealed numerous disparities between the rules of law of domestic legal systems and a fundamental difference of approach in the civil law and common law systems. A number of representatives referred to the work already done in this field in the draft elaborated in 1961 and the general conditions adopted in 1968 by the Council for Mutual Economic Assistance; in the draft rules elaborated within the framework of the European Committee on Legal Co-operation of the Council of Europe; and by Professor H. Trammer in his preliminary draft of a convention, annexed to the study submitted by the Government of Czechoslovakia.

Decision of the Commission

45. At the 12th meeting of Committee I, on 18 March 1969, the representatives of Hungary and the United Kingdom submitted a recommendation on time-limits and limitations (prescription) in the international sale of goods which the Committee had asked them to prepare. After certain amendments had been made, the proposal was approved by Committee I at its 15th meeting, on 24 March 1969, for submission to the Commission.

46. At its 44th meeting, on 26 March 1969, the Commission considered the recommendation of Committee I and unanimously adopted the following decision:

> 1. The Commission decides to set up a Working Group consisting of seven members: Argentina, Belgium, Czechoslovakia, Japan, Norway, United Arab Republic and United Kingdom of Great Britain and Northern Ireland. The Working Group should be composed of persons specially qualified in the field of law referred to the Working Group for consideration.
>
> 2. The Working Group shall:
>
> (a) Study the topic of time-limits and limitations (prescription) in the field of international sale of goods with a view to the preparation of a preliminary draft of an international convention;

(b) Confine its work to consideration of the formulation of a general period of extinctive prescription by virtue of which the rights of a buyer or seller would be extinguished or become barred; the Working Group should not consider special time-limits by virtue of which particular rights of the buyer or seller might be abrogated (e.g. to reject the goods, to refuse to deliver the goods, or to claim damages for non-conformity with the terms of the contract of sale) since these could most conveniently be dealt with by the Working Group on the international sale of goods.

3. The Working Group shall, in its work, pay special attention, inter alia, to the following points:

(a) The moment from which time begins to run;

(b) The duration of the period of prescription;

(c) The circumstances in which the period may be suspended or interrupted;

(d) The circumstances in which the period may be terminated;

(e) To what extent, if any, the prescription period should be capable of variation by agreement of the parties;

(f) Whether the issue of prescription should be raised by the court suo officio or only at the instance of the parties;

(g) Whether the preliminary draft convention should take the form of a uniform or a model law;

(h) Whether it would be necessary to state that the rules of preliminary draft convention would take effect as rules of substance or procedure;

(i) To what extent it would still be necessary to have regard to the rules of conflict of laws.

4. The Commission requests the Secretary-General to notify inter-governmental and international non-governmental organizations active in the field of the date of the meeting of the Working Group. The Secretary-General is also requested to send to the members of the Commission as well as to the foregoing organizations the studies referred to in paragraph 41 above for submission of their comments to the Working Group as soon as possible. The Secretary-General is further requested to transmit to the members of the Commission and the same organizations any drafts produced by the Working Group. It is envisaged that a preliminary draft of a convention can be completed in 1970 or 1971 and the Commission requests the Working Group to report its progress to the Commission at its third session.

47. With regard to the Working Group established under the above decision, several representatives stated that the composition of that Working Group which included the four members of the Commission which had submitted studies on the subject of time-limits and limitations (prescription), was a special arrangement and should not be considered as a precedent for the composition of future working groups that might be established by the Commission.

C. General conditions of sale and standard contracts, Incoterms and other trade terms

48. The subject of general conditions of sale and standard contracts, Incoterms and other trade terms, was considered by the Commission during a general debate held in the course of its 28th to 31st meetings, on 4, 5 and 6 March 1969, and by Committee I in the course of its 8th meeting. At that meeting, Committee I decided that sub-items (d) (general conditions of sale and standard contracts) and (e) (Incoterms and other trade terms) of item 4 of the agenda should be considered together in view of their inter-relationship. The Commission concurred with this view and this report therefore deals with both these sub-items under one heading. A summary of the observations made by members of the Commission and observers of organizations is set out in paragraphs 50 to 58 below.

49. The Commission had before it, with regard to general conditions of sale and standard contracts, a report by the Secretary-General (A/CN.9/18) and a proposal submitted by the United States (A/CN.9/L.8) and, with regard to Incoterms and other trade terms, a note by the Secretary-General (A/CN.9/14), reproducing a report submitted by the International Chamber of Commerce (ICC) for the second session of the Commission. Several representatives expressed their appreciation for the report of ICC.

50. In discussing the possibilities of promoting the wider use of the existing general conditions of sale and standard contracts as well as of Incoterms, the Commission considered the role of these formulations in the process of the unification of the law of the international sale of goods. Several representatives were of the opinion that there was an interconnexion between general conditions and a uniform law on sale of goods, in view of the fact that the provisions of a uniform law should allow some room for the application of general conditions. The view was also expressed that even if there was no widely accepted uniform law on sales, general conditions of sale and standard contracts would still be useful.

51. One representative expressed the opinion that general conditions of sale offered the best prospects of unification, since they were essentially of a practical nature and were more readily and speedily accepted than conventions involving basic legal principles. Other representatives pointed out that the application of general conditions could help to eliminate international commercial disputes and might ultimately lead to the establishment of a uniform trade law.

52. Several representatives commented on the legal character of general conditions and standard contracts. It was pointed out that general conditions, such as those drawn up by the United Nations Economic Commission for Europe (ECE), are applicable only by agreement of the parties and that mandatory rules of the applicable municipal law prevailed over them in the event of conflict. The 1968 General Conditions of the Council for Mutual Economic Assistance (CMEA) on the other hand, being of a mandatory character and thus applicable independently of the will of the parties, prevailed over the whole body of domestic law, including its mandatory rules. Because of that difference, the CMEA General Conditions were considered as being closer in character to a uniform law than to general conditions.

53. The Commission was generally agreed that out of the great number of existing general conditions of sale and standard contracts, the wider use of those prepared

by the United Nations Economic Commission for Europe (ECE) should be promoted. It was considered whether the application outside Europe of these formulations in their present form could be extended. While some of the speakers were of the opinion that the application of the ECE general conditions would not encounter any legal obstacle in countries outside Europe, others expressed the view that some modifications might be needed in order to make these formulations more widely acceptable. One representative considered that some scope should be allowed to economically weaker countries to depart from the provisions of the above-mentioned general conditions for the purpose of protecting their interests.

54. It was also pointed out that the ECE general conditions were not well known outside Europe and this impeded their wider use. The Commission was unanimous in the opinion that the widespread dissemination of the ECE formulations would help in making them more widely known and in promoting their wider use. One representative expressed the view that although he favoured the widespread dissemination of the ECE general conditions, he did not favour recommending these texts as long as no agreement had been reached on the principles governing the international sale of goods.

55. It was generally considered that the method which was most likely to promote the wider use of the ECE general conditions of sale and standard contracts would be the establishment of a joint committee of the four United Nations regional economic commissions or the convening of a meeting of these organs for exploring the possibility of the use, in all regions, of these formulations and to consider any necessary revision of the texts. It was suggested by some representatives that the Organization of American States, the Organization of African Unity and the Economic Commission for Central America should also be invited to participate in such a meeting. At the same time it was emphasized that a considerable amount of preparatory work would be needed before the convening of a meeting of this kind and the financial implications would also have to be considered. In this connexion the Commission welcomed the generous offer made by the representative of Japan to contribute to its work by preparing for its use a comparative study of the ECE general conditions.

56. Several representatives suggested that information on the CMEA General Conditions should also be disseminated. The observer from CMEA said that the secretariat of CMEA would be prepared to supply an English translation of the CMEA general conditions for dissemination.

57. As regards Incoterms, it was generally considered that they should be retained in their present form and their wider use should be promoted. One representative pointed out some differences between interpretations in Incoterms and the definitions used in the United States Uniform Commercial Code.

58. Some representatives stressed the need for formulating new general conditions for tropical products and for use in exports from developing countries.

Decisions of the Commission

59. At its 12th meeting, on 18 March 1969, Committee I approved a recommendation for submission to the Commission.

60. At its 44th meeting, on 26 March 1969, the Commission considered the recommendation of Committee I and unanimously adopted the following decision:

The Commission decides:

With regard to general conditions of sale and standard contracts:

1. (a) To request the Secretary-General to transmit the text of the ECE general conditions relating to plant, machinery, engineering goods and lumber to the Executive Secretaries of the Economic Commission for Africa (ECA), the Economic Commission for Asia and the Far East (ECAFE), and the Economic Commission for Latin America (ECLA), as well as to other regional organizations active in this field;

(b) To request the Secretary-General to make the aforementioned general conditions available in adequate number of copies and in the appropriate languages; the general conditions should be accompanied by an explanatory note describing, inter alia, the purpose of the ECE general conditions, and the practical advantages of the use of general conditions in international commercial transactions;

(c) To request the regional economic commissions, on receiving the above-mentioned ECE general conditions, to consult the Governments of the respective regions and/or interested trade circles for the purpose of obtaining their views and comments on: (i) the desirability of extending the use of the ECE general conditions to the regions concerned; (ii) whether there are gaps or shortcomings in the ECE general conditions from the point of view of the trade interests of the regions concerned and whether, in particular, it would be desirable to formulate other general conditions for products of special interest to those regions; (iii) whether it would be desirable to convene one or more committees or study groups, on a world-wide or more limited scale, whereby with the participation (if appropriate) of an expert appointed by the Secretary-General, matters raised at a regional level would be discussed and clarified;

(d) To request the other organizations to which the ECE general conditions are transmitted to express their views on points (i), (ii) and (iii) of sub-paragraph (c) above;

(e) The views and comments sought from the regional economic commissions and other organizations should be transmitted to the Secretary-General, if possible, by 31 October 1969;

(f) To request the Secretary-General to submit, together with the relevant ECE general conditions, a report to the third session of the Commission which should contain (if appropriate) an analysis of the views and comments received from the regional economic commissions and other organizations concerned;

(g) To give, at an appropriate time, consideration to the feasibility of developing general conditions embracing a wider scope of commodities than the existing specific formulations. Consideration of the feasibility of this work should be taken up after there has been an

opportunity to study the views and comments requested under sub-paragraphs (c) and (d) above.

(h) To welcome the generous offer made by the representative of Japan to contribute to the work of the Commission by preparing for its use a comparative study of the ECE general conditions;

With regard to General Conditions of Delivery (GCD) of 1968 prepared by the Council of Mutual Economic Assistance (CMEA):

2. (a) To request the Secretary-General to invite the CMEA to furnish an adequate number of copies of the General Conditions of Delivery (GCD) of 1968 in English, accompanied by an explanatory note;

(b) To request the Secretary-General to transmit in the four languages of the Commission, as appropriate, the above-mentioned General Conditions of Delivery and explanatory note to members of the Commission and to the Economic Commission for Africa, the Economic Commission for Asia and the Far East, the Economic Commission for Europe and the Economic Commission for Latin America, for information.

With regard to Incoterms 1953:

3. (a) To request the Secretary-General to inform the International Chamber of Commerce that, in the view of the Commission, it would be desirable to give the widest possible dissemination to Incoterms 1953 in order to encourage their world-wide use in international trade.

(b) To request the Secretary-General to bring the views of the Commission concerning Incoterms 1953 to the attention of the United Nations regional economic commissions in connexion with their consideration of the ECE general conditions.

D. Co-ordination of the activities of organizations in the field of international sale of goods

61. The Commission, at its 28th meeting, on 4 March 1969, requested Committee I to consider the question of co-ordination in respect of all the items under international sale of goods, i.e. the problems of the unification of norms governing the international sale of goods and the laws applicable to international sales, time-limits and limitations (prescription), general conditions of sale and standard contracts, and Incoterms and other trade terms.

62. The Commission was of the opinion that its decisions in respect of each of those items and the working methods contemplated therein would lead to a satisfactory co-ordination of the work of organizations in the field of international sale of goods and that, at the present stage of its work, no further action was required in respect of co-ordination of those items.

CHAPTER III

INTERNATIONAL PAYMENTS

A. Negotiable instruments

63. The subject of the harmonization and unification of the law of negotiable instruments was considered by the Commission during a general debate held in the course of its 29th to 31st meetings, on 5 and 6 March 1969, and by Committee II in the course of seven meetings, on 6, 7, 13 and 14 March 1969. A summary of the observations made by members of the Commission and observers of organizations during those meetings is set out in paragraphs 65 to 81 below.

64. The Commission had before it the "Preliminary Report on the Possibilities of Extending the Unification of the Law of Bills of Exchange and Cheques" (A/CN.9/19/annex 1) prepared by the International Institute for the Unification of Private Law (UNIDROIT) for the second session of the Commission. That report examines the solutions by which unification could, in principle, be promoted. Many representatives who spoke on the subject of negotiable instruments expressed their appreciation of the report by UNIDROIT which, although of a preliminary nature, significantly contributed to the work of the Commission.

65. One representative informed the Commission of the existence of a draft uniform law on negotiable instruments for Central America prepared under the auspices of the permanent secretariat of the Central American Treaty for Economic Integration. The observer of the Organization of American States (OAS) informed the Commission that a Draft Uniform Law on Negotiable Instruments for Latin America had been prepared under the auspices of the Inter-American Development Bank, and had been considered by the Inter-American Juridical Committee which decided to consider specific forms of negotiable instruments, starting with cheques and bills of exchange, both for international circulation only.

66. In evaluating the measures that could be adopted in the interest of unification, the Commission noted that there were two principal systems of negotiable instruments law, i.e. that represented by the Geneva Conventions of 1930 and 1931 and that represented by the English Bill of Exchange Act and the United States Negotiable Instruments Law (superseded by article 3 of the Uniform Commercial Code). The Commission recognized that even within these systems complete unification had not yet been achieved. With respect to the system of the Geneva Conventions, some important problems, such as provision, were not dealt with by the uniform laws forming the annex to those Conventions, while also the uniformity which those laws sought to establish had further been compromised by reservations. Similarly, divergencies did exist between the English and American acts and, consequently, in the laws of those countries which had modelled their legislation on one or the other of these acts. There was, however, general consensus that a parallel unification of the two main systems was to be regarded as a difficult and long-term task and that the work of unification should be concentrated on finding a solution that would reduce the problems arising out of the coexistence of these systems.

67. The Commission also agreed that a mere comparative study of the legal differences between the systems would not suffice for the purpose of the work towards unification and that the listing and analysis of these differences would produce an oversimplified picture of the real degree of dissimilarity. For this reason, the Commission was of the opinion that seeking the views and active support of banking and trade institutions was a prerequisite to any final decision regarding the feasibility of unification and a necessary element of its work.

68. The Commission considered whether the problems that might arise from the coexistence of the Geneva and Anglo-American systems could adequately be met by conflict rules, such as those set forth in the Geneva Convention for the Settlement of Certain Conflicts of Laws in connexio n with Bills of Exchange and Promissory Notes of 1930 and the Geneva Convention for the Settlement of Certain Conflicts of Laws in connexion with Cheques of 1931. It was observed, in this connexion, that conflict rules alone would not expedite the international circulation of negotiable instruments and that the uniform law approach, if it proved possible, was more likely to produce satisfactory results. The Commission was also informed by the Observer of the Hague Conference on Private International Law that the Conference had, in 1968, included in its future programme of work, but without giving it priority, an item entitled "The law applicable to negotiable instruments" and that, if the Commission should decide that a conflicts of law convention would contribute to solving existing problems, the Conference would be willing to prepare a draft of such a convention.

69. In the light of the decision taken by it at its first session 3/ and the preliminary report by UNIDROIT, the Commission considered the following methods that could, in principle, promote unification:

(a) Securing a wider acceptance of the Geneva Conventions of 1930 and 1931;

(b) Revising the Geneva Conventions of 1930 and 1931 with a view to making the conventions more acceptable to countries following the Anglo-American system;

(c) Creating a new negotiable instrument.

(a) Securing a wider acceptance of the Geneva Conventions of 1930 and 1931

70. The Commission concluded that this method would not offer a sufficient chance of success. The view was, however, expressed that efforts should be made to secure acceptance of the Geneva Conventions by those civil-law countries which had not yet ratified them or adapted their internal legislation to them, or which were studying proposals for uniform legislation in the field; under this view, acceptance of the Geneva Conventions was deemed preferable to maintaining a separate system or attempting to create a new system different from the existing ones.

71. It was pointed out by representatives of common law countries that, by reason, inter alia, of different banking practice and a different approach to formal requirements, the acceptance of the Geneva Conventions by countries following the Anglo-American system would inevitably require a drastic alteration of their

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3/ Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), p. 22, para. 26.

domestic practices and legal institutions in the field and that, consequently, there was little or no hope that the governments of these countries could be persuaded to accede to those Conventions. In this connexion, it was emphasized by the representatives of common law countries that the Anglo-American law of negotiable instruments was to a considerable degree the outcome of the practices and usages of bankers and traders and represented, in a sense, the conversion of lex non scripta into lex scripta; that the development of the law still depended on commercial customs and practice and on decisions of the judiciary; that the rules of common law continued to apply where they were not incompatible with statutory provisions, as evidenced by the English Bill of Exchange Act in which such common law rules as those regarding sufficiency of consideration, limitation and the capacity of the parties were preserved; and that the way of legal thinking and of formulating and interpreting legal provisions in common law countries was different from that obtaining in civil law countries.

72. On their part, representatives of civil law countries stated that the Geneva Conventions could generally be deemed to represent a satisfactory system of negotiable instruments law which had given rise to few difficulties, but they recognized that the Conventions in their present form could not be recommended unreservedly for universal application. In this connexion, some representatives referred to the lack of completeness of the Geneva Conventions and to the fact that some of their provisions had given rise to divergent interpretations, particularly in the context of new practices which had been developed since the adoption of the Conventions.

(b) Revision of the Geneva Conventions of 1930 and 1931

73. Most representatives were of the opinion that a revision of the Geneva Conventions with a view to making them more acceptable to countries following the Anglo-American system would not be an effective method of securing international uniformity in the areas where such uniformity was desirable, i.e. international transactions. These representatives drew attention to the fact that the uniform laws annexed to the Geneva Conventions applied to both national and international transactions and that it would be unrealistic to expect States already party to the Conventions or the countries following the Anglo-American system to modify their domestic law and practice for the sole purpose of achieving a greater degree of uniformity where international transactions were concerned.

74. Some representatives, however, considered that the solution consisting of revising the Geneva Conventions should not be abandoned outright in view of the fact that the essential legal differences between the Conventions and the Anglo-American laws were few and that, in some cases, these differences were overcome in practice or led to similar results, as in the case of protest and, to a lesser extent, in respect of forged endorsements. It was pointed out in this respect that although under English and American law, protest, as a condition to the right of recourse, need not be made where an inland bill had been dishonoured, it was essential in the case of a foreign bill. In the result, at least in so far as international transactions were concerned, the Anglo-American system coincided with the Geneva system under which protest for non-acceptance or non-payment was the general rule. As to the problem of forged signatures, it was emphasized that although under the common law a forged signature was inoperative and the English and American law preserved that rule, the English Bill of Exchange Act, in section 60, provided an exception in that

in certain circumstances it protected bankers paying a bill with forged endorsement from the consequences of the bill being void. In this connexion, reference was also made to the concept of abstraction, in the civil law of countries following the Geneva system, by virtue of which the rights of the holder of a negotiable instrument were not dependent on the underlying transaction or causa which explained why, in the case of a forged endorsement, a good title could nevertheless be passed by the endorser to the holder.

(c) A new negotiable instrument for international transactions

75. It was generally considered that the method which was most likely to produce tangible results in the Commission's endeavours to secure uniformity would be the creation of a new negotiable instrument. In reaching this conclusion, many members stressed that their preference for this method should not be construed as the expression of a final opinion on the feasibility and desirability of a new instrument. Such an opinion, it was felt, could only be formed after a careful study of the issues involved had been made on the basis of a questionnaire to be addressed to banking and trade institutions.

76. Some representatives took the view that the scope of the new instrument should be restricted to matters regarded as indispensable for its issue and international circulation. They were also of the opinion that the question whether the new instrument should be usable both as a bill of exchange and a cheque should be left open until full evidence on the importance of each of these instruments in international transactions had been obtained.

77. The discussions in the Commission showed that most representatives favoured an instrument, the use of which would be optional. The view was however also expressed that the optional character of the new instrument would be one of the points which should be further clarified by research and that nothing would be gained by a premature decision in this respect.

78. One representative considered that the question whether the new instrument should be used in international transactions only, or also in domestic transactions, should not be decided now. It would, in his view, be possible to envisage a situation in which, in respect of internal transactions, the present domestic negotiable instruments law would subsist during a certain period, after which the use of the new instrument would become mandatory.

79. In conformity with its earlier conclusion that any study of possible measures of unification should be made on the basis of an exhaustive survey of the views and suggestions of banking and trading institutions, the Commission took the view that a questionnaire regarding the creation of a new negotiable instrument should be drawn up and addressed to these institutions. The Commission, having heard statements by the observers of the International Monetary Fund (IMF), UNIDROIT and the International Chamber of Commerce (ICC) in which these organizations expressed their readiness to co-operate with the Commission, was of the opinion that the questionnaire should be drawn up by the Secretary-General in consultation with these organizations.

80. Some representatives considered that, for the purpose of drawing up the questionnaire, a preliminary study on the nature and characteristics of the projected instrument was indispensable. Other representatives suggested that the

questionnaire should be accompanied by a brief explanatory memorandum, but that the relevant questions should be framed in such a way as to permit the addressees to state their views and suggestions freely.

81. One representative expressed the view that it would be useful to invite organizations such as UNIDROIT to prepare technical studies on certain questions relating to the circulation and effectiveness of negotiable instruments; the studies, which would show that in practice similar solutions were reached despite divergent legal rules, would facilitate the harmonization of legislation and judicial practice. Other representatives who shared this view pointed out that such studies would also assist the Commission in its work on a new negotiable instrument.

Decisions of the Commission

82. At the 6th meeting of Committee II, on 13 March 1969, the representative of Ghana submitted a proposal for a recommendation to the Commission on behalf of Ghana, India, Kenya, Tunisia, the United Arab Republic and the United Republic of Tanzania. After certain amendments had been made, the proposal was approved by Committee II at its 7th meeting, on 13 March 1969, for submission to the Commission.

83. At the 7th meeting of Committee II, on 13 March 1969, the representative of Chile submitted a proposal for a recommendation of the Commission which was approved by Committee II at its 8th meeting, on 14 March 1969.

84. The Commission, at its 38th and 39th meetings, on 21 March 1969, considered the two recommendations of Committee II and, at its 39th meeting, adopted unanimously the texts and decisions set out in paragraphs 85-89 below.

(a) Creation of a new negotiable instrument for international transactions

85. With regard to the three possible measures described in paragraph 69 above, which could in principle be adopted in order to promote the harmonization and unification of the law relating to negotiable instruments, the Commission is of the opinion that the first measure, i.e. securing a wider acceptance of the Geneva Conventions of 1930 and 1931 on negotiable instruments, does not offer a sufficient chance of success in the context of a world-wide unification of negotiable instruments law. The Commission considers, however, that an attempt should be made to obtain acceptance of the Geneva Conventions by those countries belonging to the civil law system which have not yet ratified them, or have not yet adapted their internal legislation to them, or else are studying proposals for uniform legislation in the field.

86. As regards the second possible solution, consisting in a revision of the Geneva Conventions with a view to making them more acceptable to countries following the common law system, the Commission is of the opinion that, while a revision of the Geneva Conventions could possibly lead towards unification or harmonization and that solution should therefore not be rejected outright, problems in international transactions arising out of the existence of two major systems of law on negotiable instruments might better be solved by the third solution, consisting of the creation of a new negotiable instrument. The main reason for this conclusion is that the uniform laws forming the annex to the Geneva Conventions apply to both national and international transactions and that it would

not be practicable to ask countries to modify well established rules and practices that have been developed over a considerable period of time and which appear to give full satisfaction in domestic transactions.

87. The Commission therefore decides to study further the possibility of creating a new negotiable instrument to be used in international transactions only. To this end, the Commission requests the Secretary-General:

(a) To draw up a questionnaire in consultation with the International Monetary Fund, UNIDROIT, the International Chamber of Commerce and, as appropriate, with other international organizations concerned, taking into consideration the views expressed in the Commission;

(b) To address such a questionnaire to Governments and/or banking and trade institutions as appropriate;

(c) To make the replies to the questionnaire available to the Commission at its third session, together with an analysis thereof, prepared by the Secretary-General in consultation with the organizations mentioned in sub-paragraph (a) above.

(b) Studies on negotiable instruments

88. The Commission notes that, on certain concrete points related to the circulation and effectiveness of negotiable instruments, the commercial practices of the various countries have, in the face of specific difficulties, produced similar solutions despite the differences in legal systems. The Commission is therefore of the opinion that a comparative technical study of those questions on which it may seem possible to realize a substantial uniformity will make it possible to determine the reason for differences in legislation and may, at the same time, indicate ways of reducing such differences. Moreover, such studies and their distribution could also facilitate the harmonization of judicial practice, including that of countries having similar legislation relating to negotiable instruments, and would undoubtedly be useful also in promoting the progressive harmonization of legislation, at any rate on certain specific questions.

89. The Commission therefore requests the Secretary-General to invite, at the appropriate time, the International Monetary Fund, UNIDROIT, the International Chamber of Commerce and the other organizations concerned to prepare studies on, inter alia, the following questions arising in the main legal systems, with a commentary on the solutions that have been adopted on those questions in both commercial and judicial practice:

(a) The problem of forged signatures and endorsements;

(b) The stipulation of protests and the effects of failure to advise in cases of non-payment;

(c) The extent of liability under signature and guarantee endorsement.

B. Bankers' commercial credits

90. The subject of bankers' commercial credits was considered by the Commission at its 29th and 31st meetings, on 5 and 6 March 1969, during the general debate and by Committee II in the course of four meetings, on 10, 13 and 14 March 1969. A summary of the observations made by members of the Commission and observers of organizations during those meetings is set out in paragraphs 92 and 93 below.

91. The Commission had before it a study entitled "Documentary credits" (A/CN.9/15, annex I), submitted by ICC for the second session of the Commission. Many representatives expressed their appreciation of the study of ICC and stated that the Uniform Customs and Practice of Documentary Credits (1962 revision), drawn up by ICC, gave full satisfaction in practice.

92. Some representatives drew attention to the fact that, in some instances, difficulties of interpretation in respect of certain articles of the Code had arisen, and suggested that future work in the field of documentary credits should be concentrated on improving the Code.

93. The Commission noted with satisfaction that ICC endeavoured to keep the Code under constant review and that the problem of uniform interpretation was considered, among other matters relating to the Code, at the half-yearly meetings of the ICC's Commission on Banking Techniques and Practice. The view was also expressed that the provisions of the Code should, in due course, take account of the problems that arose in the context of new forms of inter-modal transport, i.e. transport by containers. The Commission was informed by the Observer of ICC that that Organization was at present considering such problems and would be willing to submit a report to the Commission at the appropriate time.

Decision of the Commission

94. At the 7th meeting of Committee II, on 13 March 1969, the representative of the United Kingdom submitted a recommendation for submission to the Commission which was approved by Committee II at the same meeting.

95. At its 38th and 39th meetings, on 21 March 1969, the Commission considered the recommendation of Committee II and, at its 39th meeting, unanimously adopted the following decision:

> The Commission notes with approval the valuable contribution to the development of international trade made by the "Uniform Customs and Practices for Documentary Credits" of the International Chamber of Commerce ("the Code") and expresses its satisfaction with the existing arrangements of the International Chamber of Commerce for reviewing the operation of, and when appropriate revising, the Code.
>
> The Commission requests the Secretary-General:
>
> (a) To draw the attention of Governments to the contribution which employment of the Code can make to facilitating international trade;

(b) To draw the attention of such Governments to the desirability of informing the International Chamber of Commerce of difficulties which arise in connexion with the use of the Code either by reason of divergencies of interpretation or by reason of the inadequacy or unsuitability of any of its provisions in relation to commercial needs;

(c) To inform such Governments that the Commission commends the use of the Code in relation to transactions involving the establishment of a documentary credit; and

(d) To inform the third session of the Commission of the steps taken to implement the request set out in sub-paragraphs (a), (b) and (c) above and of any work, in progress or contemplated, on the part of other organizations which may affect the procedures used in connexion with bankers' commercial credits.

The Commission decides, with a view to facilitating the dispatch of the work of the Commission's third session, that the subject of bankers' commercial credits shall be included in the work programme of that session only to the extent necessary to consider any report of the Secretary-General pursuant to sub-paragraph (d) above.

C. Guarantees and securities

96. The subject of guarantees and securities was considered by Committee II at its 4th and 5th meetings, on 10 March 1969, and at its 7th and 8th meetings, on 13 and 14 March 1969.

97. The Commission had before it the report of the Secretary-General on Guarantees and Securities as related to International Payments (A/CN.9/20 and Add.1). Owing to the fact that this report was not available for examination by Governments prior to the second session of the Commission, many representatives, while expressing appreciation for the report, felt that they could not give adequate consideration to it at this stage. The Commission also had before it a proposal submitted by Hungary concerning the preparation of uniform rules and practice relating to bank guarantees (A/CN.9/L.13) to which, for the same reasons, the Commission was unable to give proper consideration. In addition, the Commission heard a statement by the observer of the International Chamber of Commerce (ICC) on the work of that organization in the field of bank guarantees.

Decision of the Commission

98. At its 8th meeting, on 14 March 1969, Committee II approved a proposal for a recommendation for submission to the Commission.

99. The Commission, at its 38th and 39th meetings, on 21 March 1969, considered the proposal of Committee II and, at its 14th meeting, unanimously adopted the following decision:

The Commission:

1. Decides to defer consideration of the subject of guarantees and securities until its third session;

2. Requests the Secretary-General:

(a) To invite members of the Commission to submit such observations as they might wish to make on the report of the Secretary-General on guarantees and securities (A/CN.9/20 and Add.1);

(b) To supplement his report on guarantees and securities if additional material should be available which, in his opinion, would be useful to the Commission when it considers the subject at its third session;

(c) To invite the International Chamber of Commerce to submit to the Commission at its third session a report on its work in the field of certain types of bank guarantees, such as performance guarantees, tender or bid bonds and guarantees for repayment of advances made on account in respect of international supply and construction contracts.

D. Co-ordination of the work of organizations in the field of international payments

100. The Commission, at its 28th meeting, on 4 March 1969, requested Committee II to consider the question of co-ordination in respect of each of the three items under international payments, i.e. negotiable instruments, bankers' commercial credits, and guarantees and securities. The Commission was of the opinion that its decisions in respect of each of those items and the working methods contemplated therein would lead to a satisfactory co-ordination of the work of organizations in the field of international payments and that, at the present stage of its work, no further action was required in respect of co-ordination of those items.

CHAPTER IV

INTERNATIONAL COMMERCIAL ARBITRATION

101. The subject of international commercial arbitration was considered by the Commission at its 29th to 31st meetings, on 5 and 6 March 1969, during the general debate and by Committee I in the course of three meetings, on 19, 20 and 21 March 1969.

102. The Commission had before it a report by the Secretary-General on international commercial arbitration (A/CN.9/21 and Corr.1), a bibliography on arbitration law (A/CN.9/24/Add.1 and 2), and a note on the United Nations Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (A/CN.9/22 and Add.1) indicating the position in respect of ratifications of that Convention and the replies of certain States indicating whether or not they intended to accede to it.

103. The representatives who spoke on this question congratulated the Secretariat on its report which, as a detailed study in depth, was a valuable working document.

104. Most representatives considered that the Commission should not for the time being undertake to draft a new convention on international commercial arbitration since the preparation of an international convention on commercial arbitration involved considerable difficulties and, to judge from the pace of the work which had led to the adoption of the existing conventions, was bound to be a long-term undertaking.

105. For those same reasons, other representatives pointed out that, certain imperfections notwithstanding, it would be a mistake to tamper with the existing conventions, particularly 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, which had proved their value.

106. Almost all the representatives considered that the best course, for the time being, was to concentrate efforts on information and research with reference to the 1958 Convention and to try to obtain the largest possible number of ratifications or accessions to that Convention.

107. The general opinion was that the most effective course for the Commission would be to concern itself with problems of the practical application and interpretation of existing conventions, since those conventions were interpreted in various ways and it would be desirable to encourage a uniform interpretation as far as possible. Reference was made, in particular, to the difficulties in connexion with the interpretation of article 2 of the United Nations Convention of 1958. Some representatives considered that it would be helpful, in the efforts to arrive at a uniform interpretation of the conventions, to have a compendium, or at least an abstract, of commercial arbitral awards, when the parties had no objection to their publication.

108. That obviously did not mean that international commercial arbitration did not involve many other questions, and some representatives advocated setting up a small working party to consider those questions and submit practical suggestions at the next session.

109. Other representatives suggested the appointment of a special rapporteur to undertake a thorough study of the most important problems relating to the application and interpretation of the existing conventions and of other related problems.

110. One representative, while agreeing that a special rapporteur should be appointed, advocated sending a questionnaire to Governments and interested organizations with a view to obtaining information on: (a) the matters listed in chapter II of the Secretary-General's report (A/C.9/21 and Corr.1); (b) the conventions, agreements and regulations or other instruments to which the addressee was a party; (c) the texts of relevant national laws, including any laws governing the application of international instruments; (d) any of those instruments which had, in particular, to be clarified by the texts of arbitral awards or judicial decisions along with the texts of these awards and decisions; (e) measures which the Commission might adopt with a view to the unification and harmonization of international commercial arbitration law. That representative considered that the special rapporteur could base his report on the replies to the questionnaire.

Decision of the Commission

111. At its 14th meeting, on 20 March 1969, Committee I approved a recommendation for submission to the Commission.

112. The Commission, at its 44th and 45th meetings, on 26 March 1969 considered the recommendation of Committee I and unanimously adopted the following decision:

> The Commission decides to appoint Mr. Ion Nestor (Romania) as Special Rapporteur on the most important problems concerning the application and interpretation of the existing conventions and other related problems. The Special Rapporteur should have the co-operation, for documentary material, of members of the Commission and various interested intergovernmental and international non-governmental organizations.
>
> The Commission expresses the opinion 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.

113. The Special Rapporteur stated that the preliminary report which he proposed to submit to the third session of the Commission would deal in particular with the interpretation and application of the United Nations Convention of 1958.

CHAPTER V

INTERNATIONAL LEGISLATION ON SHIPPING

114. The Commission discussed this question at its 33rd, 34th, 40th, 41st and 46th meetings, on 12, 24 and 27 March 1969. It had before it a note by the Secretary-General (A/CN.9/23) reviewing the consideration given to the question at the Commission's first session and reporting on the action taken by UNCTAD in the matter, including UNCTAD resolution 14 (II) of 25 March 1968, entitled "International shipping legislation", and resolution 46 (VII) adopted by the Trade and Development Board on 21 September 1968. The note also gave particulars of the action taken in the matter by the General Assembly at its twenty-third session (resolution 2421 (XXIII) of 18 December 1968 and report of the Sixth Committee (A/7408, para. 17)) and referred to the establishment of a joint shipping legislation unit (UNCTAD secretariat/Office of Legal Affairs). A note on the role of the Commission in international legislation on shipping and the text of resolution C.44 (XXI) adopted by the Council of the Inter-Governmental Maritime Consultative Organization (IMCO) on 29 November 1968 were annexed to the note.

115. All the representatives who spoke on this item took the view that the Commission was competent to deal with the question of international legislation on shipping.

116. However, a difference of opinion arose with regard to the right time for the Commission to take up this question, the methods of work and the exact role which it should play in relation to the other organizations or bodies dealing with maritime law. A few representatives also raised the question of the subjects with which the Commission should deal.

117. Nearly all representatives were of the opinion that the Commission should give the item priority in view of the provisions of UNCTAD resolution 14 (II), Trade and Development Board resolution 46 (VII) and the recommendation made in General Assembly resolution 2421 (XXIII) that the Commission should consider the inclusion of international legislation on shipping among the priority topics in its work programme.

118. In the view of the Commission international legislation on shipping was an integral part of international trade law for whose unification and harmonization the Commission had been established; the Commission could hardly omit dealing with laws governing contracts for the delivery of goods to buyers in foreign countries, although that did not mean that it had an exclusive right to study such legislation. Other international bodies, especially the International Maritime Committee, had already made a useful contribution.

119. Some representatives expressed the view that the Trade and Development Board, in its resolution 46 (VII), had instructed the Committee on Shipping of UNCTAD to create a working group to review commercial and economic aspects of international legislation on shipping, but not its legal aspects. Many

representatives argued that, if the Commission did not undertake to draft appropriate international conventions, it was to be thought that UNCTAD, which had asked the Commission to do so, would take other steps, as provided for in its resolution 14 (II), to finalize the drafting. In order to avoid any conflict with UNCTAD, which was not competent to undertake the codification and harmonization of international trade law, the Commission should co-operate with the UNCTAD working group while retaining complete freedom of action with regard to the legal aspects of international legislation on shipping.

120. Some representatives, while recognizing that the Commission was competent to deal with the subject, considered that the most important problem was that of co-ordinating its activities with those of IMCO, UNCTAD and the International Maritime Committee. Any overlapping of activities should be avoided, for it would inevitably lead to chaos. They took the view that international legislation on shipping was a vast and complex topic requiring very specialized expert knowledge for which the Commission was unprepared. Since UNCTAD had already taken up the question, it would be advisable to wait until the UNCTAD working group had reviewed the economic and commercial aspects of such legislation; the results of its work would help to identify the areas in which action by legal bodies was required.

121. Some representatives considered that the Commission should not wait until the UNCTAD working group was set up before deciding to begin its work on the subject. Furthermore, while the Commission could act in a co-ordinating capacity, its terms of reference as laid down in General Assembly resolution 2205 (XXI), authorized it to do original work and prepare draft conventions. These representatives considered that the subjects to be recommended for priority consideration should include the question of freighting and the charter-party, the contract of carriage, the maritime insurance contract and the bill of lading.

122. Certain representatives proposed that the Secretariat should be requested to carry out a study with a view to classifying the topics and allocating them among the bodies concerned, to maintain and strengthen liaison with those bodies, and to widen the field of operations of the joint unit. The relevant report by the Secretariat would enable the Commission to determine more precisely, and with a fuller understanding of the difficulties, to what questions it should give priority.

123. Other representatives recommended that a small permanent liaison committee should be set up to study any suggestions that might be put forward by the working group on international shipping legislation whose establishment the UNCTAD Committee on Shipping was to consider at its next session. Some objected that a small committee, apart from duplicating the work of the UNCTAD committee, would be insufficiently representative and that its composition would be difficult to decide. They preferred to entrust the function of liaison to the Secretariat, while keeping in mind the role of the joint unit of the UNCTAD secretariat and the United Nations Office of Legal Affairs.

124. In the course of the discussion, IMCO and the International Maritime Committee announced that they were ready to co-operate with the Commission on that point.

Decision of the Commission

125. A draft resolution was submitted by Ghana and India (A/CN.9/L.17).

126. Another draft resolution was submitted by Belgium and Italy (A/CN.9/L.18).

127. Later Argentina, Brazil, Chile, Ghana, India, Iran, Kenya, Mexico, Tunisia, the United Arab Republic and the United Republic of Tanzania submitted a revised version (A/CN.9/L.17/Rev.1) of the draft resolution previously submitted by Ghana and India, the preamble to which reproduced most of the preamble to the Belgian-Italian draft.

128. Informal consultations were held between various regional groups and resulted in the submission at the Commission's forty-sixth meeting, on 27 March 1969, of a draft resolution sponsored now by the original eleven States, together with Belgium and Spain (A/CN.9/L.17/Rev.2). Accordingly, the draft resolution submitted by Belgium and Italy was not formally introduced.

129. The sponsors, during the discussion on the draft resolution, stressed the efforts that had been made to arrive at a solution acceptable to all and paid a tribute to the spirit of co-operation which had prevailed in the informal consultations.

130. Certain representatives, while expressing support for the joint draft resolution, said that they did so in a spirit of compromise but made observations with regard to the financial and technical aspects of the establishment of the working group proposed in the draft resolution.

131. Several representatives expressed the view that the establishment of such a working group might greatly facilitate the discussion of the question at the Commission's third session.

132. One representative said that the terms of reference of the working group should be consistent with the terms of resolution 14 (II) of 25 March 1968 and be based on the recommendations of the UNCTAD Committee on Shipping.

133. At its 46th meeting, on 27 March 1969, the Commission unanimously adopted draft resolution A/CN.9/L.17/Rev.2, which reads as follows:

> The United Nations Commission on International Trade Law,
>
> Recalling resolution 2421 (XXIII), by which the General Assembly recommended the Commission to consider adding internation legislation on shipping to its list of priority topics,
>
> Noting that in the same resolution the General Assembly took note with satisfaction of the Commission's intention to carry out its work in co-operation with organs and organizations concerned with the progressive harmonization and unification of international trade law,
>
> Having taken note of the Secretary-General's note on consideration of inclusion of international legislation on shipping among the priority topics in its work programme (A/CN.9/23), in which the developments in this field since the Commission's first session are described,

Aware of the importance of the question of international shipping and of the desirability of close collaboration with the organs and organizations already working in this field,

Expressing gratification at the full co-operation offered by the Inter-Governmental Maritime Consultative Organization and the International Maritime Committee, to whose work it pays tribute,

Taking account, in particular, of resolution 14 (II) adopted at the second session of the United Nations Conference on Trade and Development on 25 March 1968, by which the Conference requested its Committee on Shipping to create a working group on international shipping legislation, and resolution 46 (VII) adopted in this connexion on 21 September 1968 by the Trade and Development Board,

Confirming its wish to see close co-operation established between the Commission and UNCTAD in accordance with the hope expressed by the Chairman of its first session, to whom it expresses its appreciation, when at the Commission's request he apprised the UNCTAD Conference at its second session of the Commission's views,

Considering that a duplication of work should be avoided,

Noting that the UNCTAD Committee on Shipping will hold its next session at Geneva in April 1969,

Having considered the item "International Legislation on Shipping" at its second session:

1. Decides to include international legislation on shipping among the priority items in its programme of work;

2. Requests the Secretary-General to prepare a study in depth giving inter alia a survey of work in the field of international legislation on shipping done or planned in the organs of the United Nations, or in intergovernmental or non-governmental organizations, and to submit it to the Commission at its third session;

3. Decides to set up a Working Group consisting of representatives of Chile, Ghana, India, Italy, the United Arab Republic, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland, which may be convened by the Secretary-General, either on his own initiative or at the request of the Chairman, to meet some time before - and preferably shortly before - the commencement of the third session of the Commission to indicate the topics and method of work on the subject, taking into consideration the study prepared by the Secretary-General, if it is ready, and giving full regard to the recommendations of UNCTAD and any of its organs, and to submit its report to the Commission at its third session;

4. Invites the Chairman of its second session and, if he is unable to attend, his nominee from among the members of the Commission to attend the session of the UNCTAD Committee on Shipping to be held at Geneva in

April 1969 and to inform that Committee of the course of the discussion in the Commission at its second session and the Commission's desire to strengthen the close co-operation and effective co-ordination between the Commission and UNCTAD;

5. Requests the Secretary-General, should it be decided to convene the Working Group referred to in paragraph 3 above, to invite States members of the Commission and intergovernmental and non-governmental organizations active in the field to be present at the meeting of the Working Group, if they choose to do so.

CHAPTER VI

A. REGISTER OF ORGANIZATIONS AND REGISTER OF TEXTS

134. The Commission noted with satisfaction that the General Assembly, by its resolution 2421 (XXIII) of 18 December 1968, authorized the establishment by the Secretary-General of a register of organizations and a register of texts. The Commission also noted that, with regard to the register of texts, the General Assembly requested that "the Commission should consider further at its second session the precise nature and scope of such a register in the light of the report of the Secretary-General and the discussions on the registers" at the twenty-third session of the General Assembly and that the register should be established "in accordance with the further directives to be given by the United Nations Commission on International Trade Law at its second session". Accordingly, the Commission, at its 29th meeting, on 5 March 1969, during the general debate, and Committee II in the course of three meetings on 14, 17 and 18 March 1969, reconsidered in detail the nature and scope of the registers taking particular account of the financial implications and of the views which had been expressed at the General Assembly's twenty-third session. The Commission had before it a note by the Secretary-General on this question (A/CN.9/24) prepared for the second session of the Commission, as well as a report of the Secretary-General on the financial and administrative implications of the registers which had been submitted to the General Assembly at its twenty-third session (A/C.6/L.648).

135. The Commission considered possible ways in which the registers could be established to achieve their purpose fully in the most economical way. The Commission was given by the Representative of the Secretary-General detailed information in amplification of the statement of financial implications contained in A/C.6/L.648.

Nature of the registers

136. There was general agreement that the registers should serve the dual purpose of assisting the Commission in its own work and of providing the outside world (e.g. Governments, universities, organizations, commercial circles) with readily accessible texts of international legal instruments and related material. Several representatives expressed the view that the register of texts should in the initial stage only list the titles of international instruments and their sources and that the Commission should take a decision on the publication of the full texts of the instruments at its third session, taking into account possible economies in the publication of the full texts. Most representatives were of the opinion that the register of texts, in order to serve its purpose fully, should at the outset include the texts of international instruments and not merely their title and source, and should be published in the English, French, Russian and Spanish languages.

Scope of the registers

137. Most representatives took the view that the fields to be covered by the registers should, in principle, coincide with the priority topics included, or to be included, in the Commission's programme of work.

138. As to the register of organizations, the view was expressed that this register should also contain information on the work of the Commission itself.

139. As to the register of texts, since for financial and practical reasons it would not seem possible to publish the register immediately in its entirety, most representatives were of the opinion that work on the register should be done in stages. Some representatives were of the opinion that the register should, in the first stage, cover the international sale of goods (corporeal moveables) and negotiable instruments. Other representatives, while agreeing with this approach, suggested that priority should also be given to bankers' commercial credits and to guarantees and securities in view of the great importance of these instruments in international trade. Another representative suggested that the Commission should only set forth broad guidelines regarding the establishment of a register of texts in successive stages, and that it should be left to the Secretary-General to consider whether, in the first stage, material should be included on guarantees and securities, in addition to the material on the international sale of goods and on negotiable instruments. It was further suggested that the first stage should also include a list of titles and sources of international instruments in the fields to be covered by the register and the status of these instruments.

Decision of the Commission

140. At its 12th meeting, on 20 March 1969, Committee II approved recommendations for submission to the Commission.

141. At its 38th and 39th meetings, on 21 March 1969, the Commission considered the recommendations of Committee II and, at its 39th meeting, unanimously adopted the following decision:

> 1. The Commission confirms its earlier view, expressed in chapter V of the report on the work of its first session, namely, that the registers should reproduce the full text of existing international instruments and should be published in English, French, Russian and Spanish. It considers that two specific steps should be taken to reduce expenditure: (a) so far as possible, when there is no official translation of an international instrument, existing unofficial translations should be used so as to minimize translation costs which are a major element of the cost estimates; members of the Commission should be encouraged to make such translations available to the Secretary-General; and (b) the registers should follow a form which would make them suitable for commercial sale;
>
> 2. The Commission decides to add to the fields already indicated in paragraph 5 of chapter V of the report on its first session the fields of guarantees and securities and international shipping legislation;
>
> 3. The Commission requests the Secretary-General to include information on the work of the Commission in the register of organizations;

4. The Commission requests the Secretary-General to commence work on the register of texts by publishing, as the first stage, the relevant material on the international sale of goods, on negotiable instruments, on bankers' commercial credits and on guarantees and securities. It considers that the register of texts, as established in the first stage, should, in addition, to the texts of international instruments in the fields mentioned above list the title and sources of instruments in all fields to be covered by the register, so as to increase immediately the usefulness of the register of texts. It also considers that the list of instruments set out in annex II of the report of the Secretary-General on the financial and administrative implications of the establishment of the register (A/C.6/L.648) should be complemented as follows:

(a) As regards the law on sale of goods (annex II, I, 1), the register should also reproduce the text of the "General Conditions of the Technical Servicing of Machinery, Equipment and other Commodities included in Deliveries by CMEA Countries' Foreign Trade Organizations" (CMEA General Conditions of Technical Servicing of 1962);

(b) As regards the law of negotiable instruments (annex II, I, 4), the register should also reproduce the text of the uniform regulation formulated at the Hague Conference of 1912.

5. The Commission decides to review at its third session the progress made in establishing the register and to take any necessary further decision, taking account of the financial implications of the project and of the views expressed in the General Assembly.

B. BIBLIOGRAPHY

142. The Commission noted with satisfaction the progress made by the Secretary-General towards the compilation of a bibliography of published books, articles and commentaries on international conventions, model and uniform laws, customs and usages of a multilateral nature in fields covered by the register of organizations and the register of texts. The Commission was of the opinion that the bibliography would prove to be of great assistance to the work of the Commission and that it should also prove to be useful to the outside world. The view was expressed that its value would be enhanced if it included material from a wider number of countries. In this respect, the Commission took note of a statement by the representative of the Secretary-General that work was being done to extend the bibliography to cover materials from other countries. The Commission was not in a position to consider the sample of the bibliography concerning arbitration law in detail and refrained, therefore, from making specific suggestions regarding the scope and concept of that sample. The Commission expressed its appreciation for the assistance rendered by the Parker School of Foreign and Comparative Law of Columbia University and for the work accomplished by Professor P. Herzog of Syracuse University (New York) in the preparation of the bibliography.

CHAPTER VII

CO-ORDINATION OF THE WORK OF ORGANIZATIONS IN THE FIELD OF INTERNATIONAL TRADE LAW; WORKING RELATIONSHIP AND COLLABORATION WITH OTHER BODIES

143. At its 32nd meeting, on 11 March 1968, the Commission decided to consider the question of co-ordination (item 9) and the question of working relationship and collaboration with other bodies (item 10) together, in view of the close inter-relationship of these questions. The questions were considered by the Commission in the course of its 32nd meeting and by Committee II in the course of two meetings on 20 and 21 March 1969. A summary of the discussions is set out in paragraphs 146-153 below.

Co-ordination of the work of organizations in the field of international trade law

144. The Commission noted that the General Assembly, in paragraph 6 (e) of its resolution 2421 (XXIII) on the report of the United Nations Commission on International Trade Law, recommended that the Commission should "consider at its second session ways and means of promoting co-ordination of the work of organizations active in the progressive harmonization and unification of international trade law and of encouraging co-operation among them".

145. The Commission had before it a report of the Secretary-General entitled "Co-ordination of the work of organizations active in international trade law" (A/CN.9/25), setting out the background of the question of co-ordination in general, a summary of views expressed by Member States and international organizations on the ways and means by which co-ordination could be promoted and general observations and suggestions on this point. In addition, the Secretary-General's report set out a number of specific questions which, in the opinion of the Secretary-General, arose in the context of co-ordination.

146. Many representatives recognized that to secure a greater measure of co-ordination of the work or organizations active in the field of international trade law was an important task to which the Commission should continue to give full attention. At the same time, the view was expressed by a number of representatives that the Commission should not concern itself solely with co-ordination, however desirable co-ordination might be, but should engage in unification work of its own, including the actual preparation of draft conventions, enlisting the help of interested organizations as appropriate.

147. Several representatives took the view that the Commission's approach to the question of co-ordination should above all be pragmatic and flexible; they emphasized that the present practice of inviting intergovernmental and non-governmental organizations to send observers to the sessions of the Commission and to examine with them the division of work on priority topics should be continued and further developed over the years to come. These representatives

also stressed the fact that the very existence of the Commission created a greater awareness among organizations of the necessity to develop the law of international trade in a co-ordinated way. One representative expressed the opinion that the register of organizations would be helpful to other organizations in co-ordinating their work among themselves. The view was also expressed that the task of co-ordination should not be conceived as representing the static side of the Commission's work but should rather be considered as constituting a dynamic process which in itself shaped the development of international trade law.

148. The Commission also considered the questions set out in the report of the Secretary-General on co-ordination (A/CN.9/25, para. 18). As regards the collection of information on activities of organizations active in the field of international trade law for purposes of co-ordination, most representatives took the view that such information was necessary for purposes of co-ordination and should relate only to the priority topics included in the work programme of the Commission. One representative was of the opinion, however, that the information to be obtained should relate to all aspects of international trade law. As to the question whether the information so obtained should be disseminated, most representatives replied in the affirmative and considered that the information should be made available to the Commission in the form of background papers to be prepared from time to time by the Secretary-General.

149. The report of the Secretary-General also raised the question whether the information so given would duplicate the register of organizations and their work to the extent that both publications would include information on the same topics. The Commission was of the opinion that the register of organizations should be a register listing the work, main interests and future programme of work in a general way, whereas the information to be given to the Commission for purposes of co-ordination would supply information on certain specific subject matters in greater detail. The Commission accordingly expressed the view that there would not be any danger of duplication.

150. The Commission noted the questions raised in paragraph 19 of the Secretary-General's report on co-ordination concerning appropriate methods and procedures for achieving co-ordination. The Commission was of the opinion that the pragmatic approach and practice followed so far had proved satisfactory and could therefore be deemed to constitute a proper basis for the further development of such methods and procedures. The Commission further took the view that it should be left to the discretion of the Secretary-General to place before the Commission, in the light of experience gained, further recommendations concerning the action of the Commission in the matter of co-ordination.

Working relationship and collaboration with other bodies

151. The Commission considered the question of working relationship and collaboration with other bodies in the light of the note by the Secretary-General (A/CN.9/26) which provided the Commission with information on collaboration established since the end of the first session with United Nations organs and other organizations on arrangements made for observers of international organizations to attend the second session, and on organizations placed on the mailing list for documents relating to the Commission's activities. The Commission had also before it the earlier note of the Secretary-General on this question, prepared for its first session, which it had not been able to consider in detail at the time (A/CN.9/7).

152. There was general recognition that the collaboration and working relations that had been established between the Commission and the United Nations organs and other organizations since the inception of the Commission's work had proved satisfactory. It was noted in particular that collaboration in matters relating to the priority topics on the Commission's agenda was an essential element in achieving co-ordination. It was also pointed out that co-operation with such bodies as the Hague Conference on Private International Law and the International Institute for the Unification of Private Law (UNIDROIT) had not been impeded in any way by the fact that special agreements specifically relating to the Commission had not been concluded with those organizations and that it was unlikely that co-operation would be hampered in the future by the absence of such agreements. Ad hoc procedures had worked well so far and the question of special agreements with other organizations should only be considered if the necessity for such agreements became apparent.

153. The observers of organizations represented at the second session indicated their willingness to collaborate with the Commission in the unification of international trade law. In this connexion the Observer of the United International Bureaux for the Protection of Intellectual Property stated that, for purposes of co-ordination, it would probably be necessary to identify the particular needs in the field which would then have to be met in appropriate arrangements, in particular if the Commission wished to rely on other organizations to provide consultant services for its own work. The Observer of the Hague Conference on Private International Law stated that the Conference was satisfied with the current practice of the Commission which allowed observers from other organizations to participate on an equal footing with delegations, but without the right to vote; this in itself considerably facilitated collaboration and co-ordination.

Decision of the Commission

154. At its twelfth meeting, on 20 March 1969, Committee II approved a recommendation on the question of co-ordination for submission to the Commission.

155. The Commission, at its thirty-ninth meeting, on 21 March 1969, considered the recommendation submitted by Committee II and at its forty-eighth meeting on 31 March 1969, taking into account the opinions expressed by Committees I and II on the co-ordination of the work of organizations in the fields of the law of the international sale of goods and of the law of international payments, respectively, adopted unanimously the following decisions:

> The Commission is of the opinion that the pragmatic approach and practice followed so far in matters of co-ordination, collaboration and working relationship have proved satisfactory and can therefore be deemed to constitute an appropriate basis for future developments in those matters.
>
> With particular regard to the question of co-ordination the Commission is of the opinion that co-operation and exchange of information between organizations on their work would facilitate co-ordination. To this end, it requests the Secretary-General to keep other organizations fully informed about the Commission's work and to develop with those organizations contacts on an inter-secretariat level. The Commission also requests the Secretary-General to collect information on the activities of organizations

pertaining to the priority topics included in its programme of work and to make such information available to the Commission on the occasion of its annual sessions.

With particular regard to the question of collaboration and working relationship with other organizations, the Commission is of the opinion that the present methods and arrangements have produced satisfactory results and should therefore be continued. In this connexion, the Commission requests the Secretary-General to make arrangements for the attendance by observers of international organizations at the third session of the Commission, similar to those made at its second session. As to working agreements with other organizations, the Commission is of the opinion that, at this stage, no formal working agreements are necessary; the present practice of the Commission is in its view sufficiently flexible to permit the establishment and further development of working relationships and collaboration, and arrangements for specific cases, if needed, can better be made on an ad hoc basis.

CHAPTER VIII

TRAINING AND ASSISTANCE IN THE FIELD OF INTERNATIONAL TRADE LAW

156. The Commission considered the question of training and assistance in the field of international trade law at its thirty-sixth to thirty-eighth meetings on 18, 19 and 21 March 1969.

157. The Commission recalled that at its first session it had noted the special importance of increasing the opportunities for the training of experts in the field of international trade law, particularly in many of the developing countries. In considering this subject again at its second session, the Commission had before it the report of the Secretary-General (A/CN.9/27).

158. The Commission noted with satisfaction that the Advisory Committee on the United Nations Programme of Assistance on the Teaching, Study, Dissemination and Wider Appreciation of International Law had recommeded at its third session, in October 1968, that an appropriate place should be given to the activities concerning international trade law within the framework of the activities conducted under the Programme. The Commission was also pleased to note that a number of United Nations organs and international organizations had undertaken training and assistance activities in the field of international trade law and that most of these organizations had expressed their willingness to co-operate with the Commission in their particular fields of specializations.

159. The Commission reviewed the helpful observations and suggestions of the Secretary-General set forth in paragraph 36 of his report as to what further action it could usefully take. The Commission also took note of the useful suggestions of several of its members, particularly the representative of the United Republic of Tanzania, who submitted a written proposal for the Commission's consideration.

Decisions of the Commission

160. At the thirty-eighth meeting of the Commission, on 21 March 1969, the representative of the United States submitted a proposal on behalf of Brazil, Ghana, the United Republic of Tanzania and the United States of America. The Commission considered the proposal at the same meeting and unanimously adopted the following decision:

> In an effort to help meet the need for developing local expertise in international trade law, particularly in the developing countries, and for intensifying and co-ordinating the existing programmes, the Commission requests the Secretary-General:
>
> (a) To recommend to the bodies concerned that regional seminars and training courses under the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law should continue to include topics relating to international trade law;

(b) To recommend that some of the fellowships to be granted under the Programme of Assistance referred to in sub-paragraph (a) above be awarded to candidates having a special interest in international trade law;

(c) To take the necessary steps to add the names and relevant particulars of experts in international trade law for inclusion in a supplement to the Register of Experts and Scholars in International Law, as described in paragraph 36 (ii) (a) of the report of the Secretary-General (A/CN.9/27);

(d) To complete the information thus far obtained in respect of activities of international organizations in the field of training and assistance in matters of international trade law, as described in paragraph 36 (i) of the report of the Secretary-General;

(e) To consult with the Advisory Committee on the United Nations Programme of Assistance referred to in sub-paragraph (a) above and with United Nations organs, specialized agencies and other organizations and institutions active in the field of international trade law concerning the feasibility of establishing within their programmes at selected universities or other institutions in developing countries:

(i) Regional institutes or chairs for training in the field of international trade law;

(ii) Seminars or courses for students, teachers, lawyers and government officials interested or active in this field;

(f) To report to the third session of the Commission the results of his consultations and the extent to which it has been possible to achieve the foregoing objectives and to inform the Commission of what further measures may be appropriate in the light of this experience.

CHAPTER IX

YEARBOOK OF THE COMMISSION

161. In accordance with operative paragraph 6 (f) of General Assembly resolution 2421 (XXIII) the Commission, at its thirty-fifth meeting on 17 March 1969, and Committee II, in the course of its ninth to eleventh meetings on 17 to 19 March 1969, considered the question of establishing a Yearbook of the Commission. The Commission had before it a Note by the Secretary-General (A/CN.9/28) to which were annexed preliminary outlines of the contents of yearbooks of the Commission for 1968 and 1969.

162. The Commission was of the opinion that it was desirable to establish an UNCITRAL Yearbook to make the Commission's contribution in the field of international trade law more widely known and more readily available beyond the forum of the United Nations.

163. Some representatives considered that it would be premature to start publication of a Yearbook. Other representatives considered that the situation which arose in the case of the International Law Commission should be avoided where additional difficulties and expense resulted from delay in publishing that Commission's first Yearbook. There was also support for the ideas that, at least in respect of the Commission's earlier sessions, it would be enough to envisage an expanded report to the General Assembly (perhaps with the word "Yearbook" added to its title) or else an amendment to the plans concerning the register of organizations to cover the work of the Commission itself.

164. The Commission considered the question of the relationship of the proposed Yearbook to the proposed registers of organizations and texts. The Commission took the view that the two projects were separate although in a sense complementary. Each should be considered on its own merits. However, the Commission was of the view that the establishment of the registers should not, for financial or other reasons, be put in jeopardy or delayed by the publication of the Yearbook.

165. As to the contents of the Yearbook, the Commission noted the draft outlines contained in the annex to document A/CN.9/28. Some representatives considered that it was a wasteful duplication (particularly in respect of the Commission's first few sessions) merely to reproduce in extenso all the Commission's documentation, especially summary records. Other representatives considered that the Yearbook should be designed as a complete source-book of the Commission's work which would show in detail the Commission's contribution to the development of international trade law and remain as a permanent record of its work.

Decision of the Commission

166. At its eleventh meeting, on 19 March 1969, Committee II approved a recommendation for submission to the Commission.

167. The Commission, at its thirty-eighth and thirty-ninth meetings, on 21 March 1969, considered the recommendation of Committee II and, at its thirty-ninth meeting, unanimously adopted the following decision:

The Commission requests the Secretary-General:

(a) To make a study containing proposals for alternative forms of a Yearbook, taking into account relevant precedents (International Law Commission, International Court of Justice, UNIDROIT, etc.) with the detailed financial implications of each, including a general indication of any revenue from sales which might be expected;

(b) To complete the study before the beginning of the twenty-fourth session of the General Assembly and to make copies of the study available to the General Assembly.

The Commission will take, at its third session, its final decisions and recommendations on the timing and content of the Yearbook in the light of the Secretary-General's study and of the debates and decisions at the twenty-fourth session of the General Assembly.

CHAPTER X

SUGGESTIONS RELATING TO FUTURE ACTIVITIES OF THE COMMISSION

163. In its discussion of the agenda item on the programme of work until the end of 1972 the Commission, at its forty-second and forty-third meetings, on 25 March 1969, had before it a proposal submitted by France (A/CN.9/L.7).

169. In introducing the proposal (A/CN.9/L.7), the representative of France stated that a method should be devised to bring about a change in the situation which had prevailed until now whereby international conventions, the preparation of which often took many years, tended to be ratified by only a few States. In the view of the representative of France, only a fundamental methodological change would have a chance to reduce the gap between the slow pace of international legislation and the requirements of the modern world, especially in the field of international trade.

170. The representative of France proposed therefore that States, by means of a general convention, should agree to accept the rules established by the Commission or, under its auspices, by other organizations, as a body of common law (droit commun). The rules embodied in the new "common law" would apply only to international transactions and would be binding upon States, unless they expressly declined to accept them; in that case, States would be required to indicate which rules they would apply to subject-matter covered by the "common law". Thus, the instruments adopted by the Commission, and recommended by it to the General Assembly, would come into force without requiring ratification by States, except in cases where a State had notified the competent international organization of its refusal to apply all or part of the provisions of such instruments.

171. If the suggested method were adopted it would result, in effect, in the elaboration of model codes governing different aspects of international trade.

172. According to the representative of France, another method might be developed along the lines of that already applied by the International Labour Organisation, whereby Governments were required to submit conventions for ratification, according to their own constitutional procedures, within a fixed period of time.

173. The Commission was unanimous in appreciating the importance and significance of the French proposal. There was, however, general agreement that a detailed study on all apsects of the proposal would be needed before a more definite opinion on the proposal could be formed.

174. Several representatives supported the idea contained in the French proposal that consideration should be given to using model laws for achieving unification. One representative recalled General Assembly resolution 2205 (XXI) which assigned to the Commission not only the task of unification, but also that of progressive harmonization of the law of international trade. The form of a model law was best suitable for the work of harmonization. Another representative

recalled that the International Law Commission had also been faced with the choice between model rules and international conventions and had adopted a pragmatic appraoch, deciding on the value of either technique in the light of the subject at issue.

175. Some representatives expressed the view that the new method suggested by the French delegation would give rise to many difficulties, and might raise constitutional problems. In the view of one representative, the idea that rules would become obligatory only after the adoption of a convention was a contradiction per se, because it was the very system of the adoption of conventions which was at issue. Another representative considered that the proposal might conflict with the provision of Article 2, paragraph 7 of the Charter of the United Nations. A few representatives stated that in view of the heavy work programme of the Commission it would be inadvisable, for the present moment, to place any further topics on the future work programme of the Commission.

176. Many representatives suggested that the French delegation should elaborate its proposal in more detail for the third session of the Commission. The representative of France expressed his willingness to submit a working paper on the subject.

177. The representative of the Soviet Union suggested that elimination of the Commission's future programme of work. He observed that a great number of representatives had considered, at the first session of the Commission, that this question should be included in the future work programme of the Commission. In his view, the Commission would not be fulfilling its tasks if it confined itself to the consideration of the private-law problems of international trade and did not concern itself with questions of international public law which were closely related to those problems and were of major importance for the normalization of international trade. In that connexion, he proposed that at its third session the Commission should begin the preparation of a draft convention on the elimination of discrimination in laws affecting international trade and thereby carry out the task entrusted to it by the General Assembly (resolution 2205 (XXI)). The proposal was opposed by another representative on the ground that it would lead the Commission into new areas in which economic and political, and not merely legal, problems were involved.

CHAPTER XI

ORGANIZATIONAL QUESTIONS RELATING TO FUTURE WORK

A. Planning for future work

178. In its discussion of the agenda item on the programme of work until the end of 1972, the Commission, at its forty-first meeting, on 24 March 1969, had before it the annotations of the Secretary-General to this item (A/CN.9/13/Add.1, item 13).

179. At the opening of the debate on the item, the representative of the Secretary-General suggested that the Commission should consider, as far as possible, its anticipated activities until the end of 1972 in order to enable the Secretariat of the Commission to prepare the budget estimates, planning estimates and calendar of meetings for that period. He noted that the Secretariat's estimates would necessarily be based on the work programme envisaged by the Commission and could not take into consideration items which the Commission might include in its programme at future sessions.

180. It was recalled in this connexion that the General Assembly, in resolution 2205 (XXI) by which the Commission was established, had expressed its conviction that "the process of harmonization and unifcation of the law of international trade should be substantially co-ordinated, systematized and accelerated and that a broader participation should be secured in furthering progress in this area", and that the United Nations should "play a more active role towards reducing or removing legal obstacles to the flow of international trade". The Commission agreed that in order to implement the mandate entrusted to it by the General Assembly, it was desirable that there should be the widest possible participation by members of the Commission also in the preparatory work to be done by inter-sessional sub-committees, working groups or special rapporteurs, which the Commission might decide to establish or appoint . It was also considered desirable that provisions should be made, where necessary, to obtain the services of consultants or organizations with special expertise in technical matters dealt with by the Commission. The Commission agreed that this would be the normal pattern of work during the coming years.

181. The Commission also agreed that it was necessary that the Secretariat should be adequately staffed to cope with the increased workload involved in servicing the Commission.

182. 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 paragraph 180 above.

B. Establishment of working groups

183. The Commission in the course of its second session established the following three inter-sessional subsidiary bodies.

(1) Working Group on uniform rules governing the international sale of goods and the law applicable thereto (see paragraph 38 above);

(2) Working Group on time-limits and limitations (prescription) in the international sale of goods (see paragraph 46 above); and

(3) Working Group on International Legislation on Shipping (see paragraph 133 above).

184. At its 45th meeting, on 26 March 1969, the Commission decided that the term "Working Group" would be used for the present for all inter-sessional bodies set up at its second session on the understanding that the adoption of this term would in no way prevent the organ from having summary records of its discussions and other services necessary for its work. This decision was taken after receiving an opinion from the Legal Counsel of the United Nations that it is the decision of a particular organ and not its name which determines whether summary records would be issued and that full assurances could therefore be given that the question of summary records and other services would not be prejudiced if the subsidiary body was called a working group rather than a committee or sub-committee.

C. Summary records of subsidiary bodies

185. During the course of the second session a request was made for summary records for the two sessional Committees of the Whole which the Commission established at its 27th meeting, on 4 March 1969, in order that the discussion of legal issues and texts under consideration in the Committees might be available to assist the Commission in its future work. As the establishment of Committees of the Whole and the request for summary records had not been foreseen, it was not practicable in the time available to provide summary records for these committees. Special arrangements were, however, made in order to afford as complete a record as possible of the discussion of certain items in the committees. The representative of the Secretary-General informed the Commission that these special arrangements had been made only for the present session and could not be made for future sessional or inter-sessional committees or working groups.

186. On 27 March 1969 during its 46th meeting the Commission's attention was drawn to paragraph 11 of General Assembly resolution 2478 (XXIII) of 21 December 1968, by which the Assembly requested all organs other than those listed in paragraph 35 of the report of the Committee on Conferences 4/ to consider, in response to General Assembly resolution 2292 (XXII) of 8 December 1967, dispensing with summary records for their meetings, and to report to their parent organs as appropriate, so as to enable them to make their decisions available to the Committee on Conferences in time for the latter to present its relevant conclusions to the Assembly at its twenty-fourth session.

4/ Official Records of the General Assembly, Twenty-third Session, agenda item 75, document A/7361.

187. It was noted that the Commission was among those organs listed in paragraph 35 of the report of the Committee on Conferences as a body which should be provided with summary records. There was no decision, however, with respect to its subsidiary bodies. Having noted the statement of the Legal Counsel referred to in paragraph 184 above, the Commission decided not to dispense with summary records for its subsidiary bodies, but to leave it to these bodies to decide if summary records were needed in the circumstances of each case.

D. Date of the third session

188. The Commission decided, at its 46th plenary meeting, on 27 March 1969, that its third session, to be held in New York, should be convened from 6 to 30 April 1970 and, in the case of an extension, should not continue beyond 2 May 1970.

CHAPTER XII

RESOLUTIONS AND OTHER DECISIONS ADOPTED BY THE COMMISSION AT ITS SECOND SESSION

189. The resolutions and decisions adopted by the Commission at its second session are set out in the present chapter. Prior to their adoption the Commission was informed by the Secretariat of the detailed estimated costs with respect to each of these resolutions and decisions.

A. International sale of goods

1. Uniform rules governing the international sale of goods and the law applicable thereto 5/

The United Nations Commission on International Trade Law,

Recalling General Assembly resolution 2421 (XXIII) expressing the conviction that the harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, would significantly contribute to economic co-operation between countries and, thereby, to their well being,

Convinced that the Hague Conventions of 1955 and 1964, as a result of many years of study and research under the auspices of the Hague Conference on Private International Law and UNIDROIT, respectively, constitute an important contribution to the harmonization and unification of the law of the international sale of goods,

Having considered the written replies from Governments to the question, addressed to them by the Secretary-General, whether they intend to ratify, or accede to, the Hague Conventions of 1955 and 1964 and the reasons for their position, as well as the oral and written comments regarding the provisions of the Conventions made by members of the Commission at its second session.

Having further considered the studies submitted by Governments on the Hague Conventions of 1964,

Bearing in mind that seven countries have ratified the Hague Convention of 1955 and three countries the Hague Conventions of 1964,

Noting the statements made by a number of Governments regarding their intention to adhere to the Conventions, and not wishing to delay or prevent ratification of these Conventions by the countries who may desire to do so,

Considering, at the same time, the views expressed by a number of Governments that the Conventions in their present text, are not suitable for world-wide acceptance,

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5/ See paragraphs 16-39 above.

Being of the opinion that, in the establishment of generally acceptable uniform rules governing the international sale of goods, the work already done in the field should as far as possible be taken into account and that duplication of efforts should be avoided through collaboration, where appropriate, with the organizations operating in this field,

Decides:

1. To request the Secretary-General to complete the analysis of the replies received from States regarding the Hague Conventions of 1964 (A/CN.9/17) in the light of the replies and studies received since its preparation and of the written and oral comments by members of the Commission during its second session, and to submit the analysis to the Working Group established under paragraph 3;

2. To request the Secretary-General to prepare an analysis of the replies received from States regarding the Hague Convention of 1955 as well as of the written and oral comments by members of the Commission during its second session, and to submit the analysis to the Working Group to be set up under paragraph 3;

3. To establish a Working Group - composed of the following fourteen members of the Commission: Brazil, France, Ghana, Hungary, India, Iran, Japan, Kenya, Mexico, Norway, Tunisia, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America - which shall:

(a) Consider the comments and suggestions by States as analysed in the documents to be prepared by the Secretary-General under paragraphs 1 and 2 above, in order to ascertain which modifications of the existing texts might render them capable of wider acceptance by countries of different legal, social and economic systems, or whether it will be necessary to elaborate a new text for the same purpose, or what other steps might be taken to further the harmonization or unification of the law of the international sale of goods;

(b) Consider ways and means by which a more widely acceptable text might best be prepared and promoted, taking also into consideration the possibility of ascertaining whether States would be prepared to participate in a Conference;

(c) Submit a progress report to the third session of the Commission;

4. To recommend that the members of the Working Group should be represented by persons especially qualified in the law of the international sale of goods;

5. To request the Secretary-General to invite members of the Commission not represented on the Working Group, UNIDROIT, the Hague Conference on Private International Law and other international organizations concerned, to attend the meetings of the Working Group and to recommend that they should be represented by persons especially qualified in the law of the international sale of goods.

44th plenary meeting,
26 March 1969.

2. Time-limits and limitations (prescription) in the field of the international sale of goods 6/

1. The Commission decides to set up a Working Group consisting of seven members - Argentina, Belgium, Czechoslovakia, Japan, Norway, United Arab Republic and United Kingdom of Great Britain and Northern Ireland; the Working Group should be composed of persons specially qualified in the field of law referred to the Working Group for consideration;

2. The Working Group shall:

(a) Study the topic of time-limits and limitations (prescription) in the field of international sale of goods with a view to the preparation of a preliminary draft of an international convention;

(b) Confine its work to consideration of the formulation of a general period of extinctive prescription by virtue of which the rights of a buyer or seller would be extinguished or become barred; the Working Group should not consider special time-limits by virtue of which particular rights of the buyer or seller might be abrogated (e.g. to reject the goods, to refuse to deliver the goods, or to claim damages for non-conformity with the terms of the contract of sale) since these could most conveniently be dealt with by the Working Group on the international sale of goods.

3. The Working Group shall, in its work, pay special attention, inter alia, to the following points:

(a) The moment from which time begins to run;

(b) The duration of the period of prescription;

(c) The circumstances in which the period may be suspended or interrupted;

(d) The circumstances in which the period may be terminated;

(e) To what extent, if any, the prescription period should be capable of variation by agreement of the parties;

(f) Whether the issue of prescription should be raised by the court suo officio or only at the instance of the parties;

(g) Whether the preliminary draft convention should take the form of a uniform or a model law;

(h) Whether it would be necessary to state that the rules of preliminary draft convention would take effect as rules of substance or procedure;

(i) To what extent it would still be necessary to have regard to the rules of conflict of laws.

6/ See paragraphs 40-47 above.

4. The Commission requests the Secretary-General to notify inter-governmental and international non-governmental organizations active in the field of the date of the meeting of the Working Group. The Secretary-General is also requested to send to the members of the Commission as well as to the foregoing organizations the studies referred to in paragraph 41 above for submission of their comments to the Working Group as soon as possible. The Secretary-General is further requested to transmit to the members of the Commission and the same organizations any drafts produced by the Working Group. It is envisaged that a preliminary draft of a convention can be completed in 1970 or 1971 and the Commission requests the Working Group to report its progress to the Commission at its third session.

44th plenary meeting,
26 March 1969.

3. General conditions of sale and standard contracts, Incoterms and other trade terms 7/

The Commission decides:

With regard to general conditions of sale and standard contracts:

1. (a) To request the Secretary-General to transmit the text of the ECE general conditions relating to plant, machinery, engineering goods and lumber to the Executive Secretaries of the Economic Commission for Africa (ECA), the Economic Commission for Asia and the Far East (ECAFE), and the Economic Commission for Latin America (ECLA), as well as to other regional organizations active in this field;

(b) To request the Secretary-General to make the aforementioned general conditions available in adequate number of copies and in the appropriate languages; the general conditions should be accompanied by an explanatory note describing, inter alia, the purpose of the ECE general conditions, and the practical advantages of the use of general conditions in international commercial transactions;

(c) To request the regional economic commissions, on receiving the above-mentioned ECE general conditions, to consult the Governments of the respective regions and/or interested trade circles for the purpose of obtaining their views and comments on: (i) the desirability of extending the use of the ECE general conditions to the regions concerned; (ii) whether there are gaps or shortcomings in the ECE general conditions from the point of view of the trade interests of the regions concerned and whether, in particular, it would be desirable to formulate other general conditions for products of special interest to those regions; (iii) whether it would be desirable to convene one or more committee or study groups, on a worldwide or more limited scale, whereby with the participation (if appropriate) of an expert appointed by the Secretary-General, matters raised at a regional level would be discussed and clarified;

7/ See paragraphs 48-60 above.

(d) To request the other organizations to which the ECE general conditions are transmitted to express their views on points (i), (ii) and (iii) of sub-paragraph (c) above;

(e) The views and comments sought from the regional economic commissions and other organizations should be transmitted to the Secretary-General, if possible, by 31 October 1969;

(f) To request the Secretary-General to submit, together with the relevant ECE general conditions, a report to the third session of the Commission which should contain (if appropriate) an analysis of the views and comments received from the regional economic commissions and other organizations concerned;

(g) To give, at an appropriate time, consideration to the feasibility of developing general conditions embracing a wider scope of commodities than the existing specific formulations. Consideration of the feasibility of this work should be taken up after there has been an opportunity to study the views and comments requested under sub-paragraphs (c) and (d) above.

(h) To welcome the generous offer made by the representative of Japan to contribute to the work of the Commission by preparing for its use a comparative study of the ECE general conditions;

With regard to General Conditions of Delivery (GCD) of 1968 prepared by the Council of Mutual Economic Assistance (CMEA):

2. (a) To request the Secretary-General to invite the CMEA to furnish an adequate number of copies of the General Conditions of Delivery (GCD) of 1968 in English, accompanied by an explanatory note;

(b) To request the Secretary-General to transmit in the four languages of the Commission, as appropriate, the above-mentioned General Conditions of Delivery and explanatory note to members of the Commission and to the Economic Commission for Africa, the Economic Commission for Asia and the Far East, the Economic Commission for Europe and the Economic Commission for Latin America, for information;

With regard to Incoterms 1953:

3. (a) To request the Secretary-General to inform the International Chamber of Commerce that, in the view of the Commission, it would be desirable to give the widest possible dissemination to Incoterms 1953 in order to encourage their worldwide use in international trade;

(b) To request the Secretary-General to bring the views of the Commission concerning Incoterms 1953 to the attention of the United Nations regional economic commissions in connexion with their consideration of the ECE general conditions.

44th plenary meeting,
26 March 1969.

B. INTERNATIONAL PAYMENTS

1. Negotiable instruments 8/

(a) Creation of a new negotiable for international transactions

1. With regard to the three possible measures described in paragraph 69 above which could in principle be adopted in order to promote the harmonization and unification of the law relating to negotiable instruments, the Commission is of the opinion that the first measure, i.e., securing a wider acceptance of the Geneva Conventions of 1930 and 1931 on negotiable instruments, does not offer a sufficient chance of success in the context of a world-wide unification of negotiable instruments law. The Commission considers, however, that an attempt should be made to obtain acceptance of the Geneva Conventions by those countries belonging to the civil law system which have not yet ratified them, or have not yet adapted their internal legislation to them, or else are studying proposals for the uniform legislation in the field.

2. As regards the second possible solution, consisting in a revision of the Geneva Conventions with a view to making them more acceptable to countries following the common law system, the Commission is of the opinion that, while a revision of the Geneva Conventions could possibly lead towards unification or harmonization and that solution should therefore not be rejected outright, problems in international transactions arising out of the existence of two major systems of law on negotiable instruments might better be solved by the third solution consisting in the creation of a new negotiable instrument. The main reason for this conclusion is that the uniform laws forming the annex to the Geneva Conventions apply to both national and international transactions and that it would not be practicable to ask countries to modify well established rules and practices that have been developed over a considerable period of time and which appear to give full satisfaction in domestic transactions;

3. The Commission therefore decides to study further the possibility of creating a new negotiable instrument to be used in international transactions only. To this end, the Commission requests the Secretary-General:

(a) To draw up a questionnaire in consultation with the International Monetary Fund, UNIDROIT, the International Chamber of Commerce and, as appropriate, with other international organizations concerned, taking into consideration the views expressed in the Commission;

(b) To address such a questionnaire to Governments and/or banking and trade institutions as appropriate;

(c) To make the replies to the questionnaire available to the Commission at its third session, together with an analysis thereof, prepared by the Secretary-General in consultation with the organizations mentioned in sub-paragraph (a) above.

8/ See paragraphs 63-89 above.

(b) Studies on negotiable instruments

1. The Commission notes that, on certain concrete points related to the circulation and effectiveness of negotiable instruments, the commercial practices of the various countries have, in the face of specific difficulties, produced similar solutions despite the differences in legal systems. The Commission is therefore of the opinion that a comparative technical study of those questions on which it may seem possible to realize a substantial uniformity will make it possible to determine the reason for differences in legislation and may, at the same time, indicate ways of reducing such differences. Moreover, such studies and their distribution could also facilitate the harmonization of judicial practice, including that of countries having similar legislation relating to negotiable instruments, and would undoubtedly be useful also in promoting the progressive harmonization of legislation, at any rate on certain specific questions.

2. The Commission therefore requests the Secretary-General to invite, at the appropriate time, the International Monetary Fund, UNIDROIT, the International Chamber of Commerce, and the other organizations concerned to prepare studies on, inter alia, the following questions arising in the main legal systems, with a commentary on the solutions that have been adopted on those questions in both commercial and judicial practice:

(a) The problem of forged signatures and endorsements;

(b) The stipulation of protests and the effects of failure to advise in cases of non-payment;

(c) The extent of liability under signature and guarantee endorsement.

39th plenary meeting,
21 March 1969.

2. Bankers' commercial credits 9/

1. The Commission notes with approval the valuable contribution to the development of international trade made by the "Uniform Customs and Practices for Documentary Credits" of the International Chamber of Commerce ("the Code") and expresses its satisfaction with the existing arrangements of the International Chamber of Commerce for reviewing the operation of, and when appropriate revising, the Code.

2. The Commission requests the Secretary-General:

(a) to draw the attention of Governments to the contribution which employment of the Code can make to facilitating international trade;

(b) to draw the attention of such Governments to the desirability of informing the International Chamber of Commerce of difficulties which arise in

9/ See paragraphs 90-95 above.

connexion with the use of the Code either by reason of divergencies of interpretation or by reason of the inadequacy or unsuitability of any of its provisions in relation to commercial needs;

(c) to inform such Governments that the Commission commends the use of the Code in relation to transactions involving the establishment of a documentary credit; and

(d) to inform the third session of the Commission of the steps taken to implement the request set out in sub-paragraphs (a), (b) and (c) above and of any work, in progress or contemplated, on the part of other organizations which may affect the procedures used in connexion with bankers' commercial credits.

3. The Commission decides, with a view to facilitating the despatch of the work of the Commission's third session, that the subject of bankers' commercial credits shall be included in the work programme of that session only to the extent necessary to consider any report of the Secretary-General pursuant to sub-paragraph (d) above.

38th and 39th plenary meetings,
21 March 1969.

3. Guarantees and securities 10/

The Commission

1. Decides to defer consideration of the subject of guarantees and securities until its third session;

2. Requests the Secretary-General:

(a) To invite members of the Commission to submit such observations as they might wish to make on the report of the Secretary-General on guarantees and securities (A/CN.9/20 and Add.1);

(b) To supplement his report on guarantees and securities if additional material should be available which, in his opinion, would be useful to the Commission when it considers the subject at its third session;

(c) To invite the International Chamber of Commerce to submit to the Commission at its third session a report on its work in the field of certain types of bank guarantees, such as performance guarantees, tender or bid bonds and guarantees for repayment of advances made on account in respect of international supply and construction contracts.

39th plenary meeting.
21 March 1969.

10/ See paragraphs 96-99 above.

C. INTERNATIONAL COMMERCIAL ARBITRATION 11/

1. The Commission decides to appoint Mr. Ion Nestor (Romania) as Special Rapporteur on the most important problems concerning the application and interpretation of the existing Conventions and other related problems. The Special Rapporteur should have the co-operation, for documentary material, of members of the Commission and various interested inter-governmental and international non-governmental organizations.

2. The Commission expresses the opinion 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.

44th and 45th plenary meetings,
26 March 1969.

D. INTERNATIONAL LEGISLATION ON SHIPPING 12/

The United Nations Commission on International Trade Law,

Recalling resolution 2421 (XXIII), by which the General Assembly recommended the Commission to consider adding international legislation on shipping to its list of priority topics,

Noting that in the same resolution the General Assembly took note with satisfaction of the Commission's intention to carry out its work in co-operation with organs and organizations concerned with the progressive harmonization and unification of international trade law,

Having taken note of the Secretary-General's note on consideration of inclusion of international legislation on shipping among the priority topics in its work programme (A/CN.9/23), in which the developments in this field since the Commission's first session are described,

Aware of the importance of the question of international shipping and of the desirability of close collaboration with the organs and organizations already working in this field,

Expressing gratification at the full co-operation offered by the Inter-Governmental Maritime Consultative Organization and the International Maritime Commission, to whose work it pays tribute,

Taking account, in particular, of resolution 14 (II) adopted on 25 March 1968 at the second session of the United Nations Conference on Trade and Development, by which the Conference requested its Committee on Shipping to create a working group on international shipping legislation, and resolution 46 (VII) adopted in this connexion on 21 September 1968 by the Trade and Development Board,

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11/ See paragraphs 101-113 above.

12/ See paragraphs 114-133 above.

Confirming its wish to see close co-operation established between the Commission and UNCTAD in accordance with the hope expressed by the Chairman of its first session, to whom it expresses its appreciation, when at the Commission's request he apprised the UNCTAD Conference at its second session of the Commission's views,

Considering that a duplication of work should be avoided,

Noting that the UNCTAD Committee on Shipping will hold its next session at Geneva in April 1969,

Having considered the item "International legislation on shipping" at its second session:

1. Decides to include international legislation on shipping among the priority items in its programme of work,

2. Requests the Secretary-General to prepare a study in depth giving inter alia a survey of work in the field of international legislation on shipping done or planned in the organs of the United Nations, or in inter-governmental or non-governmental organizations, and to submit it to the Commission at its third session;

3. Decides to set up a Working Group consisting of representatives of Chile, Ghana, India, Italy, the United Arab Republic, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland, which may be convened by the Secretary-General, either on his own initiative or at the request of the Chairman, to meet some time before - preferably shortly before - the commencement of the third session of the Commission to indicate the topics and method of work on the subject, taking into consideration the study prepared by the Secretary-General, if it is ready, and giving full regard to the recommendations of UNCTAD and any of its organs, and to submit its report to the Commission at its third session;

4. Invites the Chairman of its second session and, if he is unable to attend, his nominee from among the members of the Commission to attend the session of the UNCTAD Committee on Shipping to be held at Geneva in April 1969 and to inform that Committee of the course of the discussion in the Commission at its second session and the Commission's desire to strengthen the close co-operation and effective co-ordination between the Commission and UNCTAD;

5. Requests the Secretary-General, should it be decided to convene the Working Group referred to in paragraph 3 above, to invite States members of the Commission and inter-governmental and non-governmental organizations active in the field to be present at the meeting of the Working Group, if they choose to do so.

46th plenary meeting,
27 March 1969.

E. REGISTER OF ORGANIZATIONS AND REGISTER OF TEXTS 13/

1. The Commission confirms its earlier view, expressed in chapter V of the report on the work of its first session, namely that the registers should reproduce the full text of existing international instruments and should be published in English, French, Russian and Spanish. It considers that two specific steps should be taken to reduce expenditure: (a) so far as possible, when there is no official translation of an international instrument, existing unofficial translations should be used so as to minimize translation costs which are a major element of the cost estimates; members of the Commission should be encouraged to make such translations available to the Secretary-General; and (b) the registers should follow a form which would make them suitable for commercial sale.

2. The Commission decides to add to the fields already indicated in paragraph 5 of chapter V of the report on its first session the fields of guarantees and securities and international shipping legislation;

3. The Commission requests the Secretary-General to include information on the work of the Commission in the register of organizations;

4. The Commission requests the Secretary-General to commence work on the register of texts by publishing, as the first stage, the relevant material on the international sale of goods, on negotiable instruments, on bankers' commercial credits and on guarantees and securities. It considers that the register of texts, as established in the first stage, should, in addition to the texts of international instruments in the fields mentioned above, list the title and sources of instruments in all fields to be covered by the register, so as to increase immediately the usefulness of the register of texts. It also considers that the list of instruments set out in annex II of the report of the Secretary-General on the financial and administrative implications of the establishment of the registers (A/C.6/L.648) should be complemented as follows:

(a) As regards the law on sale of goods (annex II, I, 1), the register should also reproduce the text of the "General Conditions of the Technical Servicing of Machinery, Equipment and other Commodities included in Deliveries by CMEA Countries' Foreign Trade Organizations" (CMEA General Conditions of Technical Servicing of 1962);

(b) As regards the law of negotiable instruments (annex II, I, 4), the register should also reproduce the text of the uniform regulations formulated at the Hague Conference of 1912.

5. The Commission decides to review at its third session the progress made in establishing the register and to take any necessary further decision, taking account of the financial implications of the project and of the views expressed in the General Assembly,

39th plenary meeting,
21 March 1969.

13/ See paragraphs 134-141 above.

F. CO-ORDINATION OF THE WORK OF ORGANIZATIONS IN THE FIELDS OF INTERNATIONAL TRADE LAW; WORKING RELATIONSHIP AND COLLABORATION WITH OTHER BODIES 14/

1. The Commission is of the opinion that the pragmatic approach and practice followed so far in matters of co-ordination, collaboration and working relationship have proved satisfactory and can therefore be deemed to constitute an appropriate basis for future developments in those matters.

2. With particular regard to the question of co-ordination the Commission is of the opinion that co-operation and exchange of information between organizations on their work would facilitate co-ordination. To this end, it requests the Secretary-General to keep other organizations fully informed about the Commission's work and to develop with those organizations contacts on an inter-secretariat level. The Commission also requests the Secretary-General to collect information on the activities of organizations pertaining to the priority topics included in its programme of work and to make such information available to the Commission on the occasion of its annual sessions.

3. With particular regard to the question of collaboration and working relationship with other organizations, the Commission is of the opinion that the present methods and arrangements have produced satisfactory results and should therefore be continued. In this connexion, the Commission requests the Secretary-General to make arrangements for the attendance by observers of international organizations at the third session of the Commission, similar to those made at its second session. As to working agreements with other organizations, the Commission is of the opinion that, at this stage, no formal working agreements are necessary; the present practice of the Commission is in its view sufficiently flexible to permit the establishment and further development of working relationships and collaboration, and arrangements for specific cases, if needed, can better be made on an ad hoc basis.

48th plenary meeting,
31 March 1969.

G. TRAINING AND ASSISTANCE IN THE FIELD OF INTERNATIONAL TRADE LAW 15/

1. The Commission, in an effort to help meet the need for developing local expertise in international trade law, particularly in the developing countries and for intensifying and co-ordinating the existing programmes, requests the Secretary-General:

(a) To recommend to the bodies concerned that regional seminars and training courses under the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law should continue to include topics relating to international trade law;

14/ See paragraphs 143-155 above.

15/ See paragraphs 156-160 above.

(b) To recommend that some of the fellowships to be granted under the Programme of Assistance referred to in sub-paragraph (a) above be awarded to candidates having a special interest in international trade law;

(c) To take the necessary steps to add the names and relevant particulars of experts in international trade law for inclusion in a supplement to the Register of Experts and Scholars in International Law, as described in paragraph 36 (ii) (a) of the report of the Secretary-General (A/CN.9/27);

(d) To complete the information thus far obtained in respect of activities of international organizations in the field of training and assistance in matters of international trade law, as described in paragraph 36 (i) of the report of the Secretary-General;

(e) To consult with the Advisory Committee on the United Nations Programme of Assistance referred to in sub-paragraph (a) above and with United Nations organs, specialized agencies and other organizations and institutions active in the field of international trade law concerning the feasibility of establishing within their programmes at selected universities or other institutions in developing countries:

(i) Regional institutes or chairs for training in the field of international trade law;

(ii) Seminars or courses for students, teachers, lawyers and government officials interested or active in this field;

(f) To report to the third session of the Commission the results of his consultations and the extent to which it has been possible to achieve the foregoing objectives and to inform the Commission of what further measures may be appropriate in the light of this experience.

38th plenary meeting,
21 March 1969.

H. YEARBOOK OF THE COMMISSION 16/

1. The Commission requests the Secretary-General:

(a) To make a study containing proposals for alternative forms of a Yearbook, taking into account relevant precedents (International Law Commission, International Court of Justice, UNIDROIT, etc.) with the detailed financial implications of each; a general indication of any revenue from sales which might be expected should be included;

(b) To complete the study before the beginning of the twenty-fourth session of the General Assembly and to make copies of the study available to the General Assembly.

16/ See paragraphs 161-167 above.

2. The Commission will take, at its third session, its final decisions and recommendations on the timing and content of the Yearbook in the light of the Secretary-General's study and of the debates and decisions at the twenty-fourth session of the General Assembly.

39th plenary meeting,
21 March 1969.

I. ORGANIZATIONAL QUESTIONS RELATING TO FUTURE WORK 17/

1. Planning for future work

1. The Commission agreed that in order to implement the mandate entrusted to it by the General Assembly, it was desirable that there should be the widest possible participation by members of the Commission also in the preparatory work to be done by inter-sessional sub-committees, working groups or Special Rapporteurs, which the Commission might decide to establish or appoint. It was also considered desirable that provisions should be made, where necessary, to obtain the services of consultants or organizations with special expertise in technical matters dealt with by the Commission. The Commission agreed that this would be the normal pattern of work during the coming years.

2. The Commission also agreed that it was necessary that the Secretariat should be adequately staffed to cope with the increased workload involved in servicing the Commission.

3. 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 paragraph 5 above.

2. Establishment of working groups

The Commission decided that the term "Working Group" would be used for the present for all inter-sessional bodies set up at its second session on the understanding that the adoption of this term would in no way prevent the organ from having summary records of its discussions and other services necessary for its work.

3. Summary records of subsidiary bodies

The Commission decided not to dispense with summary records for its subsidiary bodies, but to leave it to those bodies to decide if summary records were needed in the circumstances of each case.

17/ See paragraphs 178-188 above.

4. Date of the third session

The Commission decided, that its third session, which would be held in New York, should be convened from 6 to 30 April 1970 and, in the case of an extension, should not continue beyond 2 May 1970.

ANNEX I

SUMMARY OF THE COMMENTS MADE DURING THE SECOND SESSION ON THE 1964 HAGUE CONVENTIONS ON THE INTERNATIONAL SALE OF GOODS

A. CONVENTION RELATING TO A UNIFORM LAW ON THE INTERNATIONAL SALE OF GOODS

Article I, paragraphs 1 and 2

1. Each Contracting State undertakes to incorporate into its own legislation, in accordance with its constitutional procedure, not later than the date of the entry into force of the present Convention in respect of that State, the Uniform Law on the International Sale of Goods (hereinafter referred to as "the Uniform Law") forming the Annex to the present Convention.

2. Each Contracting State may incorporate the Uniform Law into its own legislation either in one of the authentic texts or in a translation into its own language or languages.

Comments

1. The representative of Norway said that while article I, paragraph 2, had the merit of ensuring that an identical text would be found in the legislation of all Contracting Parties, it was too rigid and ambitious and would complicate matters for countries which had their own traditions of drafting legal texts. He added that each country, in incorporating the Uniform Law into its own legislation, should be free to shape it according to its legal structure and should not be prevented, for example, from adding to its domestic law matters which might go beyond the scope of the Uniform Law, without being inconsistent with it. The representative of Norway suggested therefore that paragraph 2 of Article I should be deleted. This would in no way endanger uniformity as to the substance: there would still be an obligation to unify in accordance with the Uniform Law. It would, however, allow for the flexibility of a model law as to adaptations of a drafting or systematic character.

2. The representatives of the USSR, Tunisia, Romania and Czechoslovakia agreed with the Norwegian proposal. The observer from the Hague Conference on Private International Law also expressed general agreement with the Norwegian position.

3. In connexion with the Norwegian proposal, the representative of Czechoslovakia said that in view of the existence of the Czechoslovak International Commercial Code, his country had a special reason for favouring flexibility. A literal incorporation of the text of the Uniform Law into the Czechoslovak legal system would destroy the Code and would be a step backward in Czechoslovak law.

4. The representative of the USSR said that the technique of incorporating the text of a uniform law into national legislation was not acceptable to his country, and he preferred the system of an international convention. The representative of the USSR added that a convention on this subject should establish broad

principles rather than, as the Uniform Law did, attempt to regulate the subject in detail. Moreover, it should be made possible for States to apply other existing international instruments relating to the international sale of goods which were in force at the present time or might be concluded in the future.

5. The representative of the United Kingdom said that the Norwegian proposal would, in effect, transform the Uniform Law into a model law, and this would increase the disparities in the rules of different countries governing the international sale of goods. Accordingly, while agreeing that paragraph 2 of article I might need some clarification, he favoured the retention of the Uniform Law procedure provided therein. The representative of Australia agreed with the representative of the United Kingdom and stressed that a multiplicity of texts should be avoided. The representative of Mexico also expressed general agreement with retaining paragraph 2 of article I.

6. The Chairman asked whether the suppression of paragraph 2 of article I would meet the objections raised during the discussion. The representatives of the USSR, Australia and Romania said that the deletion of paragraph 2 would not be sufficient in view of the mandatory nature of paragraph 1 of article I, requiring Contracting States to incorporate the Uniform Law into their own legislation. The representative of Iran suggested that it would be sufficient if paragraph 2 of article I would merely provide that the English and French texts of the Uniform Law are authentic.

7. The representatives of Hungary, Romania and Tunisia criticized the provision of paragraph 1 of article I whereby the Uniform Law would apply also in respect of non-Contracting States, and stressed that the Uniform Law should apply only as between Contracting States. It was possible that certain States which were not prepared to adhere to the Convention might be bound by international instruments with which they were satisfied. The system thereby established among those States should not be interfered with by the Convention.

Articles II, III and IV

Article II

1. Two or more Contracting States may declare that they agree not to consider themselves as different States for the purpose of the requirements as to place or business of habitual residence laid down in paragraphs 1 and 2 of Article 1 of the Uniform Law because they apply to sales which in the absence of such a declaration would be governed by the Uniform Law, the same or closely related legal rules.

2. Any Contracting State may declare that it does not consider one or more non-Contracting States as different States from itself for the purpose of the requirements of the Uniform Law, which are referred to in paragraph 1 of this Article, because such States apply to sales which in the absence of such a declaration would be governed by the Uniform Law, legal rules which are the same as or closely related to its own.

3. If a State which is the object of a declaration made under paragraph 2 of this Article subsequently ratifies or accedes to the present Convention, the declaration shall remain in effect unless the ratifying or acceding State declares that it cannot accept it.

4. Declarations under paragraphs 1, 2 or 3 of this Article may be made by the States concerned at the time of the deposit of their instruments of ratification of or accession to the present Convention or at any time thereafter and shall be addressed to the Government of the Netherlands. They shall take effect three months after the date of their receipt by the Government of the Netherlands or, if at the end of this period the present Convention has not yet entered into force in respect of the State concerned, at the date of such entry into force.

Article III

By way of derogation from Article 1 of the Uniform Law, any State may, at the time of the deposit of its instrument of ratification of or accession to the present Convention declare by a notification addressed to the Government of the Netherlands that it will apply the Uniform Law only if each of the parties to the contract of sale has his place of business or, if he has no place of business, his habitual residence in the territory of a different Contracting State, and in consequence may insert the word "Contracting" before the word "States" where the latter word first occurs in paragraph 1 of Article 1 of the Uniform Law.

Article IV

1. Any State which has previously ratified or acceded to one or more Conventions on conflict of laws in respect of the international sale of goods may, at the time of the deposit of its instrument of ratification of or accession to the present Convention, declare by a notification addressed to the Government of the Netherlands that it will apply the Uniform Law in cases governed by one of those previous Conventions only if that Convention itself requires the application of the Uniform Law.

2. Any State which makes a declaration under paragraph 1 of this Article shall inform the Government of the Netherlands of the Convention or the Conventions referred to in that declaration.

Comments[a/]

8. The representative of the United Arab Republic said that Article II was an important positive contribution as it opened the way for regional harmonization and unification of the law within the framework of world-wide unification, a possibility which was of particular importance to the Arab States which had been seeking for some years to create among themselves a unified or, at least, co-ordinated legal system. Thanks to the provisions of Article II those States would be able to accede to the Convention without having to undo what had already been accomplished. The principle established in Article II of the Convention should be incorporated into the text of Article 1 of the Uniform Law.

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a/ In the comments on Articles II, III and IV of the Convention references were made to Articles 2 and 3 of the Uniform Law, the text of which is reproduced below.

9. Moreover, in the view of the representative of the United Arab Republic, Article IV was illogical because it was inadmissible that the implementation and effectiveness of the Uniform Law should depend solely on the will of the Contracting States; it was also useless because Article 3 of the Uniform Law included all the cases which the reservation under Article IV of the Convention was designed to cover.

10. The representative of Tunisia, referring to Article III, said that the Uniform Law should apply only as between Contracting States. If it was permissible to apply the Convention also to non-Contracting States, a situation might arise where the Convention was applied to nationals of a country which did not wish to adhere to the Convention.

11. The observer from the Hague Conference on Private International Law said that Article IV should include a reservation with regard to future as well as past conventions on conflict of laws. The representative of Norway agreed with that view and added that Article 2 of the Uniform Law should be deleted and in that case Article IV of the Convention would no longer be needed. The representative of Romania agreed with the views expressed by the two previous speakers. The representative of Tunisia said that while it was undesirable to continue applying rules of private international law after the Uniform Law had come into force, those rules would have to continue to be applicable on matters not covered by the Uniform Law. Article 2 of the Uniform Law should be amended in that sense. The representative of the United Arab Republic pointed out that Article 2 of the Uniform Law only excluded the application of private international law on matters dealt with in the Uniform Law.

Article V

Article V

Any State may, at the time of the deposit of its instrument of ratification of or accession to the present Convention declare, by a notification addressed to the Government of the Netherlands, that it will apply the Uniform Law only to Contracts in which the parties thereto have, by virtue of Article 4 of the Uniform Law, chosen that Law as the Law of the contract.

Comments[b/]

12. Article V was criticized by a number of representatives. In the opinion of the representatives of Iran and the United Arab Republic, the combined effect of Article V of the Convention and Article 3 of the Uniform Law was to give the parties to a contract complete freedom to exclude the application of the Law even where both parties were nationals of States which had adhered to the Convention. This was inconsistent with the purpose of the Convention which sought to establish rules governing the international sale of goods.

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b/ In the comments on Article V of the Commission, references were made to Articles 1, 3 and 4 of the Uniform Law, the text of which is reproduced below.

13. According to the representative of Ghana there was a conflict between Article V of the Convention and Articles 1, 3 and 4 of the Uniform Law. Articles 1 and 4 enumerated the cases where the Uniform Law "shall apply", and Article 3 permitted the parties to a contract to exclude the application of the Uniform Law either entirely or partially. Therefore, unless the parties availed themselves of the right given to them under Article 3, the Uniform Law should be applicable as between the parties to a contract. However, under Article V of the Convention the Uniform Law would apply only to contracts in which the parties have chosen the Uniform Law as the law of the contract, a provision which the representative of Ghana considered incompatible with Articles 1, 3 and 4 of the Uniform Law.

14. The representative of Ghana also said that Article V seemed to be contradictory to Article XI of the Convention providing that "Each Contracting State shall apply the provisions incorporated into its legislation in pursuance of the present Convention to contracts of sale to which the Uniform Law applies and which are concluded on or after the date of the entry into force of the Convention in respect of that State." He raised the question whether as between the inconsistent provisions of Articles V and XI of the Convention those of the latter should prevail. On this question the representative of Norway replied that in his opinion a reservation made by a State under Article V would prevail over any other provision of the Convention. The same position was taken by the representative of the United Kingdom.

15. The representative of Spain stated that in the name of the principle of the autonomy of the will of the parties the combined effect of Article V of the Convention and Article 3 of the Uniform Law was to undo the work done by distinguished jurists over a period of forty years and to destroy the uniformity sought by the Convention. Furthermore, this exclusive freedom of choice given to the parties to the contract was dangerous as it played in favour of the stronger party to the detriment of developing countries. These articles also provoked a legal vacuum and uncertainty as it would be difficult for the parties to a contract to know exactly what law would apply to the contract itself. Under Article V of the Convention it appeared that unless the parties expressly stipulated otherwise, the Uniform Law would not apply; mere silence could, therefore, automatically exclude the operation of the Uniform Law. The representative of Spain suggested, therefore, that Articles V of the Convention and 3 of the Uniform Law should be replaced by the text of Article 6 of the 1963 Draft which prescribed that where the parties exclude the application of the Uniform Law, they must indicate the municipal law to be applied to their contract. c/

16. In the view of the representative of Hungary Article V of the Convention reflected the wish of some developed countries to adhere to the Convention but at the same time exclude its application. This would favour the powerful merchants who would be able to take advantage of the innocence of weaker contracting parties.

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c/ The text of Article 6 of the 1963 draft is as follows:

"The parties may entirely exclude the application of the present law provided that they indicate the municipal law to be applied to their contract.

"The parties may derogate in part from the provisions of the present law provided that they agree on alternative provisions, either by setting them out or by stating to what specific rules other than those of the present law they intend to refer.

"The references, declarations or indications provided in the preceding paragraphs are to be subject of an express term or to clearly follow from the provisions of the contract."

Article V of the Convention would transform the instrument into a set of general conditions of sale whereas a law was needed in this area.

17. The representative of Tunisia pointed out that while reservations were a frequent device in international conventions, they should normally apply only to accessory provisions. The effect of Article V, however, was to enable a State to exclude the application of the entire Convention, a principle which was neither logical nor reasonable.

18. The representatives of Argentina and the United Arab Republic agreed with the representative of Spain about the contradiction between Article V of the Convention and Article 3 of the Law, and agreed also that Article 6 of the 1963 Draft should be reinstated. They also said that Article 4 of the Uniform Law should be deleted as unnecessary. The representative of Iran agreed that Article 4 of the Uniform Law should be deleted on the grounds that it embodied a principle inherent in the freedom of contract which was self-evident.

19. The representative of Mexico associated himself with the position of the representatives of Spain and Artentina and favoured reverting to Article 6 of the 1963 draft. He pointed out that it was inadmissible from a legal standpoint to subordinate the Uniform Law to the will of the parties. Furthermore, Article V of the Convention emptied of any meaning Article 3 of the Uniform Law providing that the exclusion of the application of the Law may be "expressed or implied".

20. Other representatives expressed themselves in favour of the retention of Article V. The representative of the United Kingdom said that the main advantage of Article V was to permit a cautious and progressive unification of the law on the international sale of goods. A mercantile country which adopted the Uniform Law might not necessarily be able to impose it on its businessmen over night. Considering also that the Uniform Law incorporated certain civil law concepts with which common law countries are not familiar, a transitional period was particularly desirable. The freedom given to businessmen under Article V to derogate from the Uniform Law would probably be a temporary measure since it was to be envisaged that this reservation would eventually be withdrawn.

21. The representative of Australia agreed with the representative of the United Kingdom and added that the retention of Article V might mean the difference between ratification and non-ratification by a number of countries, especially those belonging to the common law system. In his view progress was more likely to be made by a gradual process rather than by an attempt to impose unacceptable rules on unwilling business circles.

22. The representative of Japan stated that his Government had still under consideration the Hague Conventions, and he was not therefore in a position to indicate the Government's official view on the Conventions. However, Japanese business circles had tentatively expressed themselves in favour of the retention of Article V, and were of the opinion that for a few years, it would seem desirable to test the effectiveness of the Uniform Law.

23. The observer of UNIDROIT, while agreeing that Article V was legally absurd, said that it had been included for political and economic reasons. The United Kingdom representative at the 1964 Hague Conference had said that the United Kingdom

would adhere to the Convention only if a trial period under Article V was permitted. Although he agreed that Article V in effect rendered the Uniform Law similar to general conditions of sale, he thought that in practice both Article V of the Convention and Article 3 of the Uniform Law might be less dangerous than what one might fear. From a legal standpoint, however, he expressed agreement with the suggestion made by the representative of Spain that Article 6 of the 1963 draft would be preferable to the present text. The representative of Norway expressed general agreement with the position taken by the observer of UNIDROIT.

24. An intermediate position was taken by the representative of Belgium who said that while the arguments put forward against Article V (in particular by the representative of Spain) were legally unassailable, one should not lose sight of the practical importance of the practical considerations indicated by the representative of the United Kingdom. In ratifying the Convention Belgium had also made a reservation under Article V. However, the Belgian Government intended to withdraw the reservation when the law incorporating the Uniform Law into the Belgian legal system was approved by Parliament.

25. The representative of Romania expressed doubts about the practical value of the reservation contained in Article V. He said that where the parties to a contract were nationals of countries which had not adhered to the Convention, those parties were always free to choose the Uniform Law as the applicable law and give it, therefore, the status of a standard contract. However, supposing that all the States Parties to the Convention had availed themselves of the reservation under Article V, would the parties to a contract who had chosen the Uniform Law as the applicable law be bound by its provisions, or would the Uniform Law not apply because of the reservation under Article V? In the view of the representative of Romania these doubts tended to reduce considerably the alleged practical value of Article V.

26. The representative of Hungary said that if the purpose of the reservation under Article V was to protect businessmen and lawyers from the difficulties presented by an unfamiliar system of law, the same result could be achieved by other means as, for example, by providing for a delay of five years (or other suitable period of time) between the ratification of the Convention by a State and the application of the Uniform Law in the country concerned. The representative of Tunisia agreed with the suggestion made by the representative of Hungary.

Articles IX and XIII

Article IX

1. The present Convention shall be open to accession by all States Members of the United Nations or any of its specialized agencies.

2. The instruments of accession shall be deposited with the Government of the Netherlands.

Article XIII

1. Any State may, at the time of the deposit of its instrument of ratification or accession or at any time thereafter, declare, by means of a notification addressed to the Government of the Netherlands, that the present Convention shall be applicable to all or any of the territories for whose international relations it is responsible. Such a declaration shall take effect six months after the date of receipt of the notification by the Government of the Netherlands, or, if at the end of that period the Convention has not yet come into force, from the date of its entry into force.

2. Any Contracting State which has made a declaration pursuant to paragraph 1 of this Article may, in accordance with Article XII, denounce the Convention in respect of all or any of the territories concerned.

Comments

27. The representative of the USSR said that neither Article IX nor Article XIII would be acceptable to his Government. Article IX would deprive a number of States of the opportunity to accede to the Convention and Article XIII was a reflection of the past and had no place in a modern international instrument. The representative of Kenya agreed with the representative of the USSR.

28. The representative of Tanzania, agreeing with the representative of the USSR with respect to Article IX, suggested that the wording of Article IX should be amended to follow that of the corresponding article of the Hague Convention on Applicable Law of 1955.

29. The representative of the United States said this was not an appropriate forum for discussing matters of a highly political nature and reserved his position on the points raised by the previous speakers. Furthermore, the articles referred to by the previous speakers were among the "final clauses" of the Convention: the Committee should confine itself to the substantive articles during this preliminary discussion of the Hague Conventions.

B. UNIFORM LAW ON THE INTERNATIONAL SALE OF GOODS

CHAPTER I

SPHERE OF APPLICATION OF THE LAW

Article 1

1. The present Law shall apply to contracts of sale of goods entered into by parties whose places of business are in the territories of different States, in each of the following cases:

(a) where the contract involves the sale of goods which are at the time of the conclusion of the contract in the course of carriage or will be carried from the territory of one State to the territory of another;

(b) where the acts constituting the offer and the acceptance have been effected in the territories of different States;

(c) where delivery of the goods is to be made in the territory of a State other than that within whose territory the acts constituting the offer and the acceptance have been effected.

2. Where a party to the contract does not have a place of business, reference shall be made to his habitual residence.

3. The application of the present Law shall not depend on the nationality of the parties.

4. In the case of contracts by correspondence, offer and acceptance shall be considered to have been effected in the territory of the same State only if the letters, telegrams or other documentary communications which contain them have been sent and received in the territory of that State.

5. For the purpose of determining whether the parties have their places of business or habitual residences in "different States", any two or more States shall not be considered to be "different States" if a valid declaration to that effect made under Article II of the Convention dated the first day of July 1964 relating to a Uniform Law on the International Sale of Goods is in force in respect of them.

Comments

30. In addition to the references to Article 1 made during the discussion on Article V of the Convention the following comments were made in respect of Article 1.

31. The representative of Japan said that several trading companies which buy goods on "f.o.b." basis and sell them on "c.i.f." basis at the same place to their buyers abroad, agreed with the position expressed in the written comments submitted by Norway (A/CN.9/11, p. 23) that the wording of sub-paragraph (a) of Article 1 left doubts as to whether the contract of sale, in order to fall within the scope of the Uniform Law, must contain a provision or information to the effect that the goods are to be sent to another country, or whether it was sufficient that the seller understood that the goods were to be sent out of the country. He wondered whether it was necessary for the application of the Uniform Law for both parties to a contract to know that the goods were to be carried from the territory of one State to the territory of another. If prior knowledge was necessary, a burden would be imposed on the buyer's contracting process; if it was not necessary, the seller might lose the protection of its own municipal law merely by believing the transaction to be a domestic instead of an international sale of goods. The representative of Japan added that it would be useful to define the expression "place of business" which had different connotations in different countries.

32. The representative of the USSR said that the provisions of Article 1 (a) should be extended to cover also goods already carried from the territory of one State to the territory of another, but which have not yet been sold (e.g. articles of exhibition).

33. The representative of Czechoslovakia said that under Articles 1 and 7 it seemed that the Uniform Law would apply also to purchases made by tourists abroad, which would be undesirable. He added that it should be made clear what was meant by international sale of goods and that the law should apply only to commercial transactions. Regarding sub-paragraph (a), in the view of the representative of Czechoslovakia, at the time of the conclusion of the contract it might not be clear whether the carriage would actually take place, and perhaps also whether all the contracting parties were aware that such transportation would take place, and hence that the contract would be subject to the Uniform Law. With respect to sub-paragraph (c) the representative of Czechoslovakia said that doubts might arise as to the place of delivery if such place was not indicated in the contract.

34. The representative of Hungary said he doubted the necessity of attempting to define so precisely the international character of a contract of sale as it would be very difficult for any definition to be exhaustive.

35. The representative of Iran said that in view of the provision in Article 7 that the law should apply to sales regardless of the commercial or civil character of the parties or of the contracts, it would be advisable to replace the words "places of business" by the word "domiciles" which was more comprehensive.

Article 2

Rules of private international law shall be excluded for the purposes of the application of the present Law, subject to any provision to the contrary in the said Law.

Comments

36. In addition to the references to Article 2 made during the discussion on Articles II, III and IV of the Convention the following comments were made in respect of Article 2.

37. The representative of the United Arab Republic wondered whether the intent of Article 2 was to exclude rules of private international law only as to matters governed by the Uniform Law or also in respect of other matters as well.

38. The representative of the USSR said that Article 2 seemed to be based on the premise that the Uniform Law dealt with all matters relating to the international sale of goods, which appeared to be confirmed by the provisions of Article 17. However, even if some questions not expressly dealt with in the Uniform Law could be settled in conformity with the general principles of the Uniform Law (as provided in Article 17), it still remained true that the expression "general principles" was very vague, and in addition there were matters which would still fall outside the scope of the Uniform Law. Those matters should be governed by the rules of private international law, and Article 2, therefore, should be deleted.

39. The observer of UNIDROIT said that the purpose of Article 2 was to give the Uniform Law an autonomous character, thus making it unnecessary for courts to seek the applicable law in each case. On the other hand, it was not possible to exclude totally the application of rules of private international law as there were matters

(e.g. prescription) which were not dealt with in the Uniform Law and which it was not possible to settle in conformity with the general principles of the Uniform Law. In such cases recourse must be had to private international law.

40. The representative of the United States said that the "coercive effect" of Articles 1 and 2 was unfortunate, i.e. the fact that the Uniform Law may be forced on the parties to a sales contract even though their Governments had not accepted the Uniform Law and the contract was executed and performed outside the forum State. He added that the reservation provided for in Article III of the Convention relieves this "coercive effect" only where the forum State has made the reservation.

Article 3

> The parties to a contract of sale shall be free to exclude the application thereto of the present Law either entirely or partially. Such exclusion may be express or implied.

Comments

41. In addition to the references to Article 3 made during the discussion on Articles II, III, IV and V of the Convention, the following comments were made in respect of Article 3.

42. The representative of Norway, recalling the comments made by previous speakers on Article 3, suggested that the freedom of contract provided therein should apply only when the parties make clear which law applies to a contract. He also raised the following questions: To what extent should mandatory rules in national legislation be applicable in relations covered by the Uniform Law? Is it for the courts of the State where such mandatory rules apply to determine their exact scope? In his opinion, the question of the applicability of mandatory rules amounting to ordre public was outside the scope of the Uniform Law and should be governed by the lex fori (see article 8). This would also apply to questions of the validity of an agreement between the parties, for instance, in relation to Article 3, and to questions as to the validity of usages referred to in Article 9.

43. The representative of Hungary said that while he favoured the retention of Article 3, he preferred requiring the parties to decide which would be the governing law where the application of the Uniform Law was excluded by the parties themselves. He added that if, in accordance with the conflicts rules of the lex fori a foreign law was applicable in a particular case, the mandatory rules of the lex fori would not generally apply. However, the imperative rules (norms of ordre public) must always apply.

44. The representative of Japan thought that Article 3 should be maintained but the word "implied" might lead to litigation. The observer of the Hague Conference on Private International Law agreed that the word "implied" opened the way to uncertainties and disputes.

Article 4

The present Law shall also apply where it has been chosen as the law of the contract by the parties, whether or not their places of business or their habitual residences are in different States and whether or not such States are Parties to the Convention dated the first day of July 1964 relating to a Uniform Law on the International Sale of Goods, to the extent that it does not affect the application of any mandatory provisions of law which would have been applicable if the parties had not chosen the Uniform Law.

Comments

45. In addition to the references to Article 4 made during the discussion on Article V of the Convention, the following comments were made in respect of Article 4.

46. The representative of Hungary referring to Articles 4 and 5, paragraph 2, said that while under domestic law there was no need to make a distinction between imperative and mandatory rules as neither of them could be excluded, the same was not true in international transactions and a distinction between the two concepts was necessary. As an example, the rules governing the maximum rate of interest were mandatory under domestic law but not internationally.

47. The representative of Ghana pointed out that the word "also" in Article 4 showed that the provisions of that Article would apply in addition to the cases where the Uniform Law would ordinarily be applicable under Article 1. In other words, Article 1 was the rule and Article 4 simply permitted the extension of the Uniform Law beyond the cases provided for in Article 1. If that was so the representative of Ghana wondered why Article V of the Convention referred only to Article 4 and not also to Article 1 of the Uniform Law.

Article 5

1. The present Law shall not apply to sales:

(a) of stocks, shares, investment securities, negotiable instruments or money;

(b) of any ship, vessel or aircraft, which is or will be subject to registration;

(c) of electricity;

(d) by authority of law or on execution or distress.

2. The present Law shall not affect the application of any mandatory provision 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 instalments.

Comments

48. The representative of Norway said that while paragraph 2 of Article 5 excluded from the scope of the Convention mandatory rules in respect of purchase of goods by instalments, other mandatory rules were not mentioned. The record of the 1964 Hague Conference showed that all imperative or mandatory rules were intended to be excluded and he thought that the latter solution would be preferable. Accordingly, the representative of Norway suggested that paragraph 2 of Article 5 should be deleted or amended for the purpose of extending it to all mandatory rules amounting to international ordre public (see Article 8). The question as to whether a national mandatory rule should be regarded as an imperative rule for purposes of international transactions had in general to be governed by national law.

49. The representative of Romania agreed with the suggestion made by the representative of Norway.

50. The representative of the United Arab Republic said that in view of the growing importance of instalment payments he was in favour of excluding the application of mandatory rules in respect of instalment payments. However, he added that this provision should apply both to buyers and sellers, and not only to the buyers, as provided in paragraph 2 of Article 5.

51. The representative of Hungary, disagreeing with the representative of Norway, said that in his view it was correct to exclude from the application of the law mandatory rules in respect of instalment payments. On the other hand imperative rules (or rules of ordre public) of the forum could not be avoided and the Uniform Law should in no way prevail over them.

52. The observer of the Hague Conference on Private International Law said that under the present wording of paragraph 2 of Article 5 some difficulties might arise in ascertaining which national law would apply as to the mandatory character of the rules concerned. He suggested that this paragraph should be interpreted in the same way as the provision of Article 4 relating to the application of mandatory rules.

Article 6

> Contracts for the supply of goods to be manufactured or produced shall be considered to be sales within the meaning of the present Law, unless the party who orders the goods undertakes to supply an essential and substantial part of the materials necessary for such manufacture or production.

Comments

53. The representative of Czechoslovakia said that difficulties were likely to arise in interpreting the meaning of "an essential and substantial part of the materials". That concept had been excluded from the International Trade Code of Czechoslovakia, which provided that a contract in respect of goods to be purchased could be considered to be a contract of sale only if the materials for processing were procured solely by the seller. In addition to the difficulty of determining the borderline between the essential and non-essential part of the necessary

materials, it should be borne in mind that violation by the purchaser of his obligation with regard to handling the materials would affect the position of the parties concerning deficiencies in the goods produced. It would thus be desirable to subject such cases to the same legel provisions as those applicable to cases where production of the goods concerned only the seller. The representative of Czechoslovakia considered, therefore, that a contract of sale should be limited to cases in which all the materials necessary for the production of goods were to be supplied by the seller.

Article 7

The present Law shall apply to sales regardless of the commercial or civil character of the parties or of the contracts.

Comments

54. In the opinion of the representative of Hungary the Uniform Law should be confined to commercial matters and should not apply to civil matters.

Article 8

The present Law shall govern only the obligations of the seller and the buyer arising from a contract of sale. In particular, the present Law shall not, except as otherwise expressly provided therein, be concerned with the formation of the contract, nor with the effect which the contract may have on the property in the goods sold, nor with the validity of the contract or of any of its provisions or of any usage.

Comments

55. The representative of the USSR said that the Uniform Law on the Sale of Goods and the Uniform Law on the Formation of Contracts should be incorporated in a single instrument. Accordingly, he thought that Article 8 should not exclude rules concerning the formation of contracts of sale.

56. The representative of Norway referred to his comments under Articles 3 and 5.

Article 9

1. The parties shall be bound by any usage which they have expressly or impliedly made applicable to their contract and by any practices which they have established between themselves.

2. They shall also be bound by usages which reasonable persons in the same situation as the parties usually consider to be applicable to their contract. In the event of conflict with the present Law, the usages shall prevail unless otherwise agreed by the parties.

3. Where expressions, provisions or forms of contract commonly used in in commercial practice are employed, they shall be interpreted according to the meaning usually given to them in the trade concerned.

Comments

57. The representative of the USSR objected to the principle that usages would prevail over the Uniform Law. Usages were often devices established by big monopolies and it would be wrong to recognize the priority of usages over the Uniform Law.

58. The representative of Czechoslovakia said that while usages were very important in international trade in certain commodities, that concept was less precise than legal rules and could give rise to uncertainties. Under the Czechoslovak International Trade Code the rights and obligations of the parties were determined in the following sequence: mandatory rules, direct contract stipulations, indirect contract stipulations (e.g. reference in the contract to certain usages), and general usages used in international trade for particular commodities. The representative of Czechoslovakia said that the system used in the Czechoslovak International Trade Code might serve as guidance for future regulation of the law of international sale.

59. The representative of Hungary agreed with the representative of Czechoslovakia and added that different usages might be developed in the same country for the same goods. The usage to be applied might be that of the place of the conclusion of the contract or the place of its execution. The application of usage tended to favour the stronger and older-established party which would be likely to be more familiar with the complicated questions involved. Moreover, under Article 9 even usages unknown to the parties would prevail over the law, a clearly unacceptable solution.

60. The representative of Norway expressed the view that under Article 8 the validity of usages was left to national law.

61. The representative of Japan pointed out that the word "usage" was to be found not only in Article 9 but also in Articles 8, 25, 42 and 61 of the Uniform Law. That expression might give rise to considerable difficulties. For example, did "usage" mean the usage in the world or in a particular region or in a particular country? He added that the definition of "usage" in paragraph 2 of Article 9 was very abstract and very ambiguous. The representative of Japan said that according to some business circles in his country it would be desirable to attempt to define "usage" more precisely. In this connexion he mentioned the definition given in section 1-205 (2) of the Uniform Commercial Code in the United States which reads:

> "A usage of trade is any practice or method of dealing having such regularity or observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court."

Articles 10, 62 and 70

Article 10

For the purposes of the present Law, a breach of contract shall be regarded as fundamental wherever the party in breach knew, or ought to have known, at the time of the conclusion of the contract, that a reasonable person in the same situation as the other party would not have entered into the contract if he had foreseen the breach and its effects.

Article 62

1. Where the failure to pay the price at the date fixed amounts to a fundamental breach of the contract, the seller may either require the buyer to pay the price or declare the contract avoided. He shall inform the buyer of his decision within a reasonable time; otherwise the contract shall be ipso facto avoided.

2. Where the failure to pay the price at the date fixed does not amount to a fundamental breach of the contract, the seller may grant to the buyer an additional period of time of reasonable length. If the buyer has not paid the price at the expiration of the additional period, the seller may either require the payment of the price by the buyer or, provided that he does so promptly, declare the contract avoided.

Article 70

1. If the buyer fails to perform any obligation other than those referred to in sections I and II of this chapter, the seller may:

(a) where such failure amounts to a fundamental breach of the contract, declare the contract avoided, provided that he does so promptly, and claim damages in accordance with Articles 84 to 87; or

(b) in any other case, claim damages in accordance with Article 82.

The seller may also require performance by the buyer of his obligation, unless the contract is avoided.

Comments

62. Referring to Article 62 the observer of the International Chamber of Commerce pointed out that this Article might have effects obviously not intended by the authors of the Uniform Law. There would be no difficulty where goods had not yet been delivered or the price had not yet been paid. However, the provisions of this article would create serious difficulties where for example the goods had been delivered and the price (as for instance in the case of instalment payments) had not yet been fully paid. The failure to pay a number of instalments would normally be regarded as a fundamental breach of the contract. Under the provision

of the second sentence of paragraph 1 of Article 62 if the seller did not demand payment from the buyer promptly, the latter would be able to maintain that the seller had not informed him "of his decision within a reasonable time" and claim that the contract was ipso facto avoided and even demand the right to return the goods and recover any instalments paid. This would obviously be inequitable.

63. The representative of the USSR said that the remark by the ICC observer provided an illustration of the need for a clear definition of what constituted a fundamental breach. Article 62, paragraph 1 envisaged the case where the failure to pay the price at the date fixed amounted to a fundamental breach; it did not, however, say that the failure to pay the price at the date fixed amounted to a fundamental breach in all cases. It would thus be for the arbitrator or the competent court to decide in each case whether a fundamental breach had taken place; inevitably there would be differences in the interpretation given in different countries as to what constituted a fundamental breach.

64. The representative of Hungary agreed with the two previous speakers and said it was unfortunate that the same fact might constitute fundamental breach in one country (with the possible consequence of an ipso facto avoidance of the contract), while in another country that fact did not constitute fundamental breach.

65. The representative of Japan pointed out the inadequacy of paragraph 1 (a) of Article 70 in cases where a breach resulted from the insufficiency of the amount of a banker's letter of credit. The provisions of this paragraph gave the seller the choice of only two remedies: cancellation of the contract or a claim for damages. It would be desirable to enable the seller to delay the delivery of the goods until the banker's letter of credit was amended, if he wished, without being penalized for failure to perform his obligations.

66. The representative of the United Kingdom said that Article 10 attempted to define in broad terms what constituted fundamental breach. Another approach might have been to enumerate the cases amounting to a fundamental breach (such as the failure to pay the price, certain cases of nonconformity of the goods, failure to open a banker's letter of credit in due time, etc.). However, a precise enumeration might bring about injustice because of the possibility of automatic avoidance of the contract. Therefore, there were some advantages in a broad and flexible definition of fundamental breach, although it would seem desirable to improve the text.

67. The representative of Hungary questioned the necessity of ipso facto avoidance in Article 62. It would be preferable to require the seller to write a letter to the buyer informing him that he (the seller) considered that a fundamental breach had been committed; the buyer should then be given the opportunity to reply stating his position. The representatives of Australia and the United Kingdom agreed with the observation made by the representative of Hungary and said that his approach coincided with that of common law countries. The representative of Norway also expressed general agreement with the representative of Hungary.

68. The representative of the United Arab Republic thought that a defect of Article 10 was that it left to the subjective judgement of the parties the determination of whether a fundamental breach had occurred. This question should instead be decided by a judge or arbitrator.

Articles 11, 12 and 13

Article 11

Where under the present Law an act is required to be performed "promptly", it shall be performed within as short a period as possible, in the circumstances, from the moment when the act could reasonably be performed.

Article 12

For the purposes of the present Law, the expression "current price" means a price based upon an official market quotation, or, in the absence of such a quotation, upon those factors which, according to the usage of the market, serve to determine the price.

Article 13

For the purposes of the present Law, the expression "a party knew or ought to have known", or any similar expression, refers to what should have been known to a reasonable person in the same situation.

Comments

69. The representative of the USSR pointed out that Articles 10-13 contained a number of vague expressions, such as "short period", "reasonable person", "current price" and "according to the usage of the market". These expressions were ambiguous and would give rise to difficulties and uncertainties.

Article 15

A contract of sale need not be evidenced by writing and shall not be subject to any other requirements as to form. In particular, it may be proved by means of witnesses.

Comments

70. The representative of the USSR said that in his country it was required that contracts must be in writing. He suggested, therefore, that this Article should be modified so as to provide that if under the law of even one of the States whose enterprises were concluding a contract a written form was required for international sale transactions, the contract should be valid provided that the offer and acceptance were made in writing. The representative of Romania agreed with the representative of the USSR and said that also under Romanian law contracts must be in writing.

71. The representative of the United Kingdom, referring to the observations of the representative of the USSR, said that in common law countries it was only in exceptional circumstances that contracts of sales had to be evidenced in

writing. While he appreciated that the common law system was different from that of a number of other European legal systems, and particularly those of the centrally planned economies, it was open to the parties to the contract to exclude the application of Article 15 by availing themselves of the provisions of Article 3 of the Uniform Law. Many international contracts were made by telephone and it was reasonable to provide that evidence in writing was not required.

72. The representative of the United Arab Republic said that the concept of specific performance was unknown in certain countries and any reference to it should, therefore, be deleted. The representative of Japan said that Japanese business circles thought that if the concept of specific performance was retained, it should be defined for the benefit of countries not familiar with it.

Article 17

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.

Comments

73. The representative of the USSR said that the expression "general principles on which the present Law is based" was another vague concept which would give rise to difficulties of interpretation.

74. The representative of Norway agreed with the representative of the USSR and said the article was unfortunate in that it referred exclusively to the general principles on which the Uniform Law itself was based. This seemed to imply that it would not be permissible to rely on other principles in cases where adequate guidance was not provided by the "general principles" on which the Uniform Law was based.

75. The representative of Japan also said that Japanese business circles hoped the expression "general principles" would be clarified.

Articles 18 and 19

Article 18

The seller shall effect delivery of the goods, hand over any documents relating thereto and transfer the property in the goods, as required by the contract and the present Law.

Article 19

1. Delivery consists in the handing over of goods which conform with the contract.

2. Where the contract of sale involves carriage of the goods and no other place for delivery has been agreed upon, delivery shall be effected by handing over the goods to the carrier for transmission to the buyer.

3. Where the goods handed over to the carrier are not clearly appropriated to performance of the contract by being marked with an address or by some other means, the seller shall, in addition to handing over the goods, send to the buyer notice of the consignment and, if necessary, some document specifying the goods.

Comments

76. The representative of Spain stressed that in his view the definiton of delivery in paragraph 1, Article 19 was confusing and inadequate. In the French text "délivrance" and "remise", and in the English text "delivery" and "handing over" were synonymous and, therefore, the definition was tautological. The definitions contained in the earlier drafts were more satisfactory. Delivery was not a unilateral but a bilateral act, depending not only on the will of the seller but also on the co-operation of the buyer and his willingness to receive the goods. Under the laws of Spain and certain South American States, as well as in the draft Uniform Law of 1939 the seller had the obligation to make the goods available to the buyer and not just to hand them over. The goods must be free of defects, handed over in the right place, etc.; these are fundamental operations in the delivery of goods which are particularly important in international sales. The representative of Spain suggested, therefore, that paragraph 1 of Article 19 should be replaced by the provisions of the 1939 draft.

77. Concerning paragraph 2 of Article 19 the representative of Spain expressed the view that its provisions were inconsistent with those of paragraph 2 of Article 73. If the seller had already dispatched the goods before the difficult economic situation of the buyer envisaged in paragraph 2 of Article 73 had become apparent, how could he suspend the performance of his obligations if, according to the terms of paragraph 2 of Article 19, he had already effected delivery by handing over the goods to the carrier?

78. The representative of the United Arab Republic thought that the word "remise" or "handing over" in paragraph 1 of Article 19 was correct. However, he agreed with the representative of Spain that it should be made clear that the seller was required to take whatever action was necessary to make sure that the goods were placed at the disposal of the buyer.

79. The representative of Tunisia thought that the definition of "délivrance" in paragraph 1 of Article 19 was clear in French and it could only mean placing the goods at the buyer's disposal. The form of delivery would have to be in accordance with the terms of the contract. However, as had been pointed out by some international organizations, there was some divergence between paragraph 2 of Article 19 and certain international transport conventions. Any new draft of this Article should conform with those conventions.

80. The representative of Mexico agreed with the representative of Spain that the concept of delivery was not clearly defined in Article 19 and preferred the wording of the 1939 draft whereby delivery included all the acts which the seller was obliged to perform for the goods to be handed over to the buyer.

81. The representative of the United Kingdom said that the definition of delivery in the Uniform Law had been formulated in accordance with the Anglo-Saxon concept which recognized the duties of the seller to deliver the goods. He added, however, that this concept had not been refined in the common law system as much as in the civil law and thought, therefore, that it might be desirable to define the concept of delivery more precisely.

82. The representative of Italy said that the Uniform Law was an attempt to make a bridge between the common law and civil law systems and the concept of delivery had been borrowed from the common law. Differently from the representative of Spain, he did not see any contradiction between paragraph 2 of Article 19 and paragraph 2 of Article 73. The articles of the Uniform Law should not be analysed with preconceived ideas derived from familiarity with the common law or civil law systems.

83. The observer of the International Chamber of Commerce said that the wording of paragraph 2 of Article 19 could give rise to difficulties as it was not clear whether the expression "handing over the goods to the carrier" applied to the first carrier or to the sea carrier.

84. Referring to Article 18 the representative of Japan said that some Japanese businessmen wondered whether the expression "any documents" was sufficiently clear. The question of what kinds of documents the seller should be required to hand over was never answered in the Uniform Law. He agreed with those representatives who had expressed themselves in favour of a clear definition of the concept of delivery which should be easily understandable to any businessman.

Articles 25 and 26

Article 25

The buyer shall not be entitled to require performance of the contract by the seller, if it is in conformity with usage and reasonably possible for the buyer to purchase goods to replace those to which the contract relates. In this case the contract shall be ipso facto avoided as from the time when such purchase should be effected.

Article 26

1. Where the failure to deliver the goods at the date fixed amounts to a fundamental breach of the contract, the buyer may either require performance by the seller or declare the contract avoided. He shall inform the seller of his decision within a reasonable time; otherwise the contract shall be ipso facto avoided.

2. If the seller requests the buyer to make known his decision under paragraph 1 of this Article and the buyer does not comply promptly, the contract shall be ipso facto avoided.

3. If the seller has effected delivery before the buyer has made known his decision under paragraph 1 of this Article and the buyer does not exercise promptly his right to declare the contract avoided, the contract cannot be avoided.

4. Where the buyer has chosen performance of the contract and does not obtain it within a reasonable time, he may declare the contract avoided.

Comments

85. The representative of Japan observed that while the provisions of these articles would seem fair for commodities where the price fluctuated rapidly, the same might not be true in the case of industrial products where the price tends to be more stable. While it seemed reasonable to prevent risks of speculation by waiting and watching the movement of the price, there seemed to be less justification for depriving the buyer of the right to require performance of the contract by the seller in cases where, owing to the present speed of means of communication, the risk of speculation was minimum.

Articles 27 and 30

Article 27

1. Where failure to deliver the goods at the date fixed does not amount to a fundamental breach of the contract, the seller shall retain the right to effect delivery and the buyer shall retain the right to require performance of the contract by the seller.

2. The buyer may however grant the seller an additional period of time of reasonable length. Failure to deliver within this period shall amount to a fundamental breach of the contract.

Article 30

1. Where failure to deliver the goods at the place fixed amounts to a fundamental breach of the contract, and failure to deliver the goods at the date fixed would also amount to a fundamental breach, the buyer may either require performance of the contract by the seller or declare the contract avoided. The buyer shall inform the seller of his decision within a reasonable time; otherwise the contract shall be ipso facto avoided.

2. If the seller requests the buyer to make known his decision under paragraph 1 of this Article and the buyer does not comply promptly, the contract shall be ipso facto avoided.

3. If the seller has transported the goods to the place fixed before the buyer has made known his decision under paragraph 1 of this Article and the buyer does not exercise promptly his right to declare the contract avoided, the contract cannot be avoided.

Comments

86. The representative of Romania criticized the expressions "reasonable" and "promptly" used in these articles as imprecise and vague concepts. However, the representative of the United Arab Republic said it would be preferable to retain such expressions and to leave their interpretation to courts or arbitral tribunals in the light of the circumstances of each case.

Article 33

1. The seller shall not have fulfilled his obligation to deliver the goods where he has handed over:

(a) part only of the goods sold or a larger or a smaller quantity of the goods than he contracted to sell;

(b) goods which are not those to which the contract relates or goods of a different kind;

(c) goods which lack the qualities of a sample or model which the seller has handed over or sent to the buyer, unless the seller has submitted it without any express or implied undertaking that the goods would conform therewith;

(d) goods which do not possess the qualities necessary for their ordinary or commercial use;

(e) goods which do not possess the qualities for some particular purpose expressly or impliedly contemplated by the contract;

(f) in general, goods which do not possess the qualities and characteristics expressly or impliedly contemplated by the contract.

2. No difference in quantity, lack of part of the goods or absence of any quality or characteristic shall be taken into consideration where it is not material.

Comments

87. The representative of Japan said that under the wording of paragraph 2 doubts could arise as to what should be regarded as "not material". The scope of this expression might be unreasonably broadened to the detriment of the buyer's rights.

Article 35

1. Whether the goods are in conformity with the contract shall be determined by their condition at the time when risk passes. However, if risk does not pass because of a declaration of avoidance of the contract or of a demand for other goods in replacement, the conformity of the goods with the contract shall be determined by their condition at the time when risk would have passed had they been in conformity with the contract.

2. The seller shall be liable for the consequences of any lack of conformity occurring after the time fixed in paragraph 1 of this Article if it was due to an act of the seller or of a person for whose conduct he is responsible.

Comments

88. The representative of the USSR said that this Article, in addition to linking the responsibility of the seller to the transfer of risk, should deal with the question of the seller's responsibility with regard to goods covered by a guarantee under the contract (e.g. in case of purchase of plants, machinery, etc.).

Article 38

1. The buyer shall examine the goods, or cause them to be examined, promptly.

2. In the case of carriage of the goods the buyer shall examine them at the place of destination.

3. If the goods are redespatched by the buyer without transhipment and the seller knew or ought to have known, at the time when the contract was concluded, of the possibility of such redespatch, examination of the goods may be deferred until they arrive at the new destination.

4. The methods of examination shall be governed by the agreement of the parties or, in the absence of such agreement, by the law or usage of the place where the examination is to be effected.

Comments

89. The representative of Japan said that the word "promptly" in paragraph 1 of Article 38 could give rise to difficulties especially when read in conjunction with the provision of paragraph 2 to the effect that goods should be examined by the buyer "at the place of destination". In case, for example, the buyer was a trading company which was the middleman between the manufacturer and user or consumer, or in case the buyer was one of the middlemen in a chain of contracts this requirement would result in doubts and uncertainties.

The same might be true with such buyers concerning the requirement of "without transhipment" in paragraph 3 of Article 38, if the goods were to be put on rail or automobile from ship.

Articles 52 and 53

Article 52

1. Where the goods are subject to a right or claim of a third person, the buyer, unless he agreed to take the goods subject to such right or claim, shall notify the seller of such right or claim, unless the seller already knows thereof, and request that the goods should be freed therefrom within a reasonable time or that other goods free from all rights and claims of third persons be delivered to him by the seller.

2. If the seller complies with a request made under paragraph 1 of this Article and the buyer nevertheless suffers a loss, the buyer may claim damages in accordance with Article 82.

3. If the seller fails to comply with a request made under paragraph 1 of this Article and a fundamental breach of the contract results thereby, the buyer may declare the contract avoided and claim damages in accordance with Articles 84 to 87. If the buyer does not declare the contract avoided or if there is no fundamental breach of the contract, the buyer shall have the right to claim damages in accordance with Article 82.

4. The buyer shall lose his right to declare the contract avoided if he fails to act in accordance with paragraph 1 of this Article within a reasonable time from the moment when he became aware or ought to have become aware of the right or claim of the third person in respect of the goods.

Article 53

The rights conferred on the buyer by Article 52 exclude all other remedies based on the fact that the seller has failed to perform his obligation to transfer the property in the goods or that the goods are subject to a right or claim of a third person.

Comments

90. The representative of Tunisia noted that these Articles, and in general section III of the Uniform Law entitled "Transfer of Property", dealt only with transfer of property in case of litigation. It might be desirable to include in the Uniform Law also provisions for the transfer of property in general.

Articles 55 and 56

Article 55

1. If the seller fails to perform any obligation other than those referred to in Articles 20 to 53, the buyer may:

(a) where such failure amounts to a fundamental breach of the contract, declare the contract avoided, provided that he does so promptly, and claim damages in accordance with Articles 84 to 87, or

(b) in any other case, claim damages in accordance with Article 82.

2. The buyer may also require performance by the seller of his obligation, unless the contract is avoided.

Article 56

The buyer shall pay the price for the goods and take delivery of them as required by the contract and the present Law.

Comments

91. The representative of Czechoslovakia said that the provisions in these Articles concerning the obligations of the seller and the buyer were not complete. In this connexion he mentioned that the Czechoslovak International Trade Code contained general provisions concerning all contractual obligations in connexion with the sale of goods. For instance, it was provided that the creditor was in default or delay if he failed to co-operate in performing all the acts required of him. In that case the debtor would be entitled to claim compensation for the costs incurred as a result of the creditor's default or delay. In addition the debtor might be entitled to avoid the contract in certain cases of creditor's default or delay. As long as the creditor was in default or delay the debtor was not in default and was, therefore, not responsible for the performance of his obligations. The representative of Czechoslovakia suggested, therefore, that it would be useful to regulate more completely the obligation of the creditor to co-operate in the fulfilment of the transaction.

Article 57

Article 57

Where a contract has been concluded but does not state a price or make provisions for the determination of the price, the buyer shall be bound to pay the price generally charged by the seller at the time of the conclusion of the contract.

Comments

92. The representative of the USSR criticized this Article on the ground that a law should not permit the conclusion of a contract without a price or at least a clear indication as to the means for determining the price. This Article would lead to arbitrariness.

93. The representative of Hungary shared that view and considered that the only exception to the rule that the price is an essential element of the contract might

be where, while the price had not been established in a contract, it could be inferred from a previous contract between the same parties for the same goods.

Article 69

The buyer shall take the steps provided for in the contract, by usage or by laws and regulations in force, for the purpose of making provision for or guaranteeing payment of the price, such as the acceptance of a bill of exchange, the opening of a documentary credit or the giving of a banker's guarantee.

Comments

94. The representative of Japan said that the provisions of Article 69 did not take into account the many disputes which could arise between buyers and sellers about documentary credits, as for example disputes over contracts providing for a letter of credit without specifying its precise contents, the time of opening the credit or the amount involved.

Article 73

1. Each party may suspend the performance of his obligations whenever, after the conclusion of the contract, the economic situation of the other party appears to have become so difficult that there is good reason to fear that he will not perform a material part of his obligations.

2. If the seller has already despatched the goods before the economic situation of the buyer described in paragraph 1 of this Article becomes evident, he may prevent the handing over of the goods to the buyer even if the latter holds a document which entitles him to obtain them.

3. Nevertheless, the seller shall not be entitled to prevent the handing over of the goods if they are claimed by a third person who is a lawful holder of a document which entitles him to obtain the goods, unless the document contains a reservation concerning the effects of its transfer or unless the seller can prove that the holder of the document, when he acquired it, knowingly acted to the detriment of the seller.

Comments

95. The representative of the United Arab Republic said that while an attempt had been made in the Uniform Law to establish a balance between the obligations of the seller and the buyer, the provisions of this article were likely to leave the weaker party at the mercy of the stronger one, to the detriment of developing countries. Paragraph 2 of Article 73 would enable a seller who had already dispatched the goods to prevent their delivery to the buyer if the economic situation of the latter appeared to have become so difficult that there was good reason to fear that he would not perform a material part of his obligations. Thus, the seller (or, under paragraph 1, either party) would be entitled to decide

unilaterally that the other party was in a precarious economic position and would then be entitled to stop the delivery of the goods in transitu. For developing countries which have a vital need for certain goods, the failure to receive them might have very serious consequences. The representative of the United Arab Republic emphasized that to enable a party to suspend the performance of his obligations unilaterally was a dangerous practice open to arbitrariness. He added that while it was true that in many national laws stoppage in transitu was permitted, this possibility was confined to cases where the competent authority had adjudged a party bankrupt or insolvent.

96. The representative of the United Kingdom said that under English law the choice to be made under Article 73 was not subjective but objective and if the party made the wrong choice he himself would be in breach of contract. Thus, if a seller, availing himself of the provisions of paragraph 2 of Article 73, stopped the goods in transitu for fear that a buyer in another country would not perform his obligations, and if the buyer challenged the action of the seller, it would be for the courts to decide whether the seller's decision had been warranted. Thus, in his opinion, there should be no fear that the matter would be left to the unilateral choice of a party. These views were shared by the representatives of the United States and Italy. The latter added that a party abusing his right to anticipate a breach of contract by the other party would run the risk of being compelled to pay damages to the injured party.

Article 74

1. Where one of the parties has not performed one of his obligations, he shall not be liable for such non-performance if he can prove that it was due to circumstances which, according to the intention of the parties at the time of the conclusion of the contract, he was not bound to take into account or to avoid or to overcome; in the absence of any expression of the intention of the parties, regard shall be had to what reasonable persons in the same situation would have intended.

2. Where the circumstances which gave rise to the non-performance of the obligation constituted only a temporary impediment to performance, the party in default shall nevertheless be permanently relieved of his obligation if, by reason of the delay, performance would be so radically changed as to amount to the performance of an obligation quite different from that contemplated by the contract.

3. The relief provided by this Article for one of the parties shall not exclude the avoidance of the contract under some other provision of the present Law or deprive the other party of any right which he has under the present Law to reduce the price, unless the circumstances which entitled the first party to relief were caused by the act of the other party or of some person for whose conduct he was responsible.

Comments

97. In the view of the representative of Czechoslovakia this Article did not deal with sufficient precision with the consequences of governmental interference in private contractual relations. He cited some recent cases where this problem had

arisen. For example, an enterprise in Czechoslovakia had purchased $12 million worth of rolling mill equipment from a United States firm. Although the price had been paid in advance, the United States Government had forbidden the shipment on the ground that the equipment was strategic material. The Czechoslovak enterprise had claimed refund of the amount paid, but the American firm had disclaimed responsibility on the ground that the equipment had been produced for the purpose of being shipped to Czechoslovakia and the seller could not be made liable for the action of the United States Government in denying an export permit. Another example mentioned by the representative of Czechoslovakia was a sale of crude oil by the Soviet Union to Israel, the export of which was forbidden by the USSR authorities after the Suez crisis of 1956; the question then arose whether the seller or the buyer should bear the losses. Problems of this nature often arise in modern international trade, and Article 74 did not provide a clear solution. The Czechoslovak International Trade Code sought to solve this problem by providing that the seller was responsible for obtaining export and related permits and the buyer for obtaining import and related permits. Thus, the Czechoslovak law made it clear when a risk had to be borne by the buyer or the seller in an international trade transaction.

98. The representative of Argentina criticized Article 74 for being insufficiently clear and for having an excessively subjective character.

99. The representative of the United Kingdom said that under English law the problem of the consequences of frustration was dealt with by apportioning the losses between the parties according to the justice of the circumstances. Normally in the situations described by the representative of Czechoslovakia any money paid would be prima facie recoverable, but the seller would be entitled, at the discretion of the court, to set off the expenses he had incurred.

Article 97

1. The risk shall pass to the buyer when delivery of the goods is effected in accordance with the provisions of the contract and the present Law.

2. In the case of the handing over of goods which are not in conformity with the contract, the risk shall pass to the buyer from the moment when the handing over has, apart from the lack of conformity, been effected in accordance with the provisions of the contract and of the present Law, where the buyer has neither declared the contract avoided nor required goods in replacement.

Comments

100. The observer of the International Chamber of Commerce remarked that under this article the risk "shall pass to the buyer when delivery of the goods is effected", and recalled that delivery had been defined in Article 19. Where the parties agreed to accept well-known delivery clauses (e.g. INCOTERMS), no problem would arise. Where, however, this was not the case, the Uniform Law did not provide a clear solution to the problem, for instance in cases where goods were delivered to a carrier or in the case of subsequent trans-shipment. It would be difficult to solve the problems arising in such cases in the light of the "general principles", on which the law was based, as provided in Article 17 thereof.

II

A. CONVENTION RELATING TO A UNIFORM LAW ON THE FORMATION OF CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

101. The representative of the USSR stated that his comments relating to the Convention on the International Sale of Goods generally applied also to this Convention. In particular, he said that Article VII of this Convention was unacceptable on the ground that it restricted the Convention itself to States Members of the United Nations or any of its specialized agencies; Article XI was unacceptable because it contained the outmoded "colonial clause".

B. UNIFORM LAW ON THE FORMATION OF CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

Article 1

1. The present Law shall apply to the formation of contracts of sale of goods entered into by parties whose places of business are in the territories of different States, in each of the following cases:

(a) where the offer or the reply relates to goods which are in the course of carriage or will be carried from the territory of one State to the territory of another;

(b) where the acts constituting the offer and the acceptance are effected in the territories of different States;

(c) where delivery of the goods is to be made in the territory of a State other than that within whose territory the acts constituting the offer and the acceptance are effected.

2. Where a party does not have a place of business, reference shall be made to his habitual residence.

3. The application of the present Law shall not depend on the nationality of the parties.

4. Offer and acceptance shall be considered to be effected in the territory of the same State only if the letters, telegrams or other documentary communications which contain them are sent and received in the territory of that State.

5. For the purpose of determining whether the parties have their places of business or habitual residences in "different States", any two or more States shall not be considered to be "different States" if a valid declaration to that effect made under Article II of the Convention dated the 1st day of July 1964 relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods is in force in respect of them.

6. The present Law shall not apply to the formation of contracts of sale:

(a) of stocks, shares, investment securities, negotiable instruments or money;

(b) of any ship, vessel or aircraft, which is or will be subject to registration;

(c) of electricity;

(d) by authority of law or on execution or distress.

7. Contracts for the supply of goods to be manufactured or produced shall be considered to be sales within the meaning of the present Law, unless the party who orders the goods undertakes to supply an essential and substantial part of the materials necessary for such manufacture or production.

8. The present Law shall apply regardless of the commercial or civil character of the parties or of the contracts to be concluded.

9. Rules of private international law shall be excluded for the purpose of the application of the present Law, subject to any provision to the contrary in the said Law.

Article 2

1. The provisions of the following Articles shall apply except to the extent that it appears from the preliminary negotiations, the offer, the reply, the practices which the parties have established between themselves or usage, that other rules apply.

2. However, a term of the offer stipulating that silence shall amount to acceptance is invalid.

Article 3

An offer or an acceptance need not be evidenced by writing and shall not be subject to any other requirement as to form. In particular, they may be proved by means of witnesses.

Article 4

1. The communication which one person addresses to one or more specific persons with the object of concluding a contract of sale shall not constitute an offer unless it is sufficiently definite to permit the conclusion of the contract by acceptance and indicates the intention of the offeror to be bound.

2. This communication may be interpreted by reference to and supplemented by the preliminary negotiations, any practices which the parties have established between themselves, usage and any applicable legal rules for contracts of sale.

Article 5

1. The offer shall not bind the offeror until it has been communicated to the offeree; it shall lapse if its withdrawal is communicated to the offeree before or at the same time as the offer.

2. After an offer has been communicated to the offeree it can be revoked unless the revocation is not made in good faith or in conformity with fair dealing or unless the offer states a fixed time for acceptance or otherwise indicates that it is firm or irrevocable.

3. An indication that the offer is firm or irrevocable may be expressed or implied from the circumstances, the preliminary negotiations, any practices which the parties have established between themselves or usage.

4. A revocation of an offer shall only have effect if it has been communicated to the offeree before he has despatched his acceptance or has done any act treated as acceptance under paragraph 2 of Article 6.

Article 6

1. Acceptance of an offer consists of a declaration communicated by any means whatsoever to the offeror.

2. Acceptance may also consist of the despatch of the goods or of the price or of any other act which may be considered to be equivalent to the declaration referred to in paragraph 1 of this Article either by virtue of the offer or as a result of practices which the parties have established between themselves or usage.

Article 7

1. An acceptance containing additions, limitations or other modifications shall be a rejection of the offer and shall constitute a counter-offer.

2. However, a reply to an offer which purports to be an acceptance but which contains additional or different terms which do not materially alter the terms of the offer shall constitute an acceptance unless the offeror promptly objects to the discrepancy; if he does not so object, the terms of the contract shall be the terms of the offer with the modifications contained in the acceptance.

Article 8

1. A declaration of acceptance of an offer shall have effect only if it is communicated to the offeror within the time he has fixed or, if no such time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror, and usage. In the case of an oral offer, the acceptance shall be immediate, if the circumstances do not show that the offeree shall have time for reflection.

2. If a time for acceptance is fixed by an offeror in a letter or in a telegram, it shall be presumed to begin to run from the day the letter was dated or the hour of the day the telegram was handed in for despatch.

3. If an acceptance consists of an act referred to in paragraph 2 of Article 6, the act shall have effect only if it is done within the period laid down in paragraph 1 of the present Article.

Article 9

1. If the acceptance is late, the offeror may nevertheless consider it to have arrived in due time on condition that he promptly so informs the acceptor orally or by despatch of a notice.

2. If however the acceptance is communicated late, it shall be considered to have been communicated in due time, if the letter or document which contains the acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have been communicated in due time; this provision shall not however apply if the offeror has promptly informed the acceptor orally or by despatch of a notice that he considers his offer as having lapsed.

Article 10

An acceptance cannot be revoked except by a revocation which is communicated to the offeror before or at the same time as the acceptance.

Article 11

The formation of the contract is not affected by the death of one of the parties or by his becoming incapable of contracting before acceptance unless the contrary results from the intention of the parties, usage or the nature of the transaction.

Article 12

1. For the purposes of the present Law, the expression "to be communicated" means to be delivered at the address of the person to whom the communication is directed.

2. Communications provided for by the present Law shall be made by the means usual in the circumstances.

Article 13

1. Usage means any practice or method of dealing, which reasonable persons in the same situation as the parties, usually consider to be applicable to the formation of their contract.

2. Where expressions, provisions or forms of contract commonly used in commercial practice are employed, they shall be interpreted according to the meaning usually given to them in the trade concerned.

Comments

102. The representative of Mexico expressed the view that the Uniform Law would gain in clarity if it reverted to the principle contained in the 1958 Draft that the contract was deemed to be concluded when the acceptance was communicated to the offeror.

103. The representative of Italy disagreed with the representative of Mexico and expressed himself in favour of the solution contained in paragraph 1 of Article 5 which was a middle course between the so-called "mailbox" and "communication" theories. He added that it had been wise to omit in the Uniform Law any reference to the moment at which the agreement became binding, thus avoiding a conflict between the two theories.

104. The representative of Japan stated that some business firms in his country had criticized the provision of paragraph 2 of Article 2 whereby "a term of the offer stipulating that silence shall amount to acceptance is invalid." This was contrary to the provision of the Commercial Code, at least in Japan, where as between merchants regularly doing business with each other, silence was deemed to amount to acceptance of the offer if the offer was within the scope of the ordinary course of business of the offeror. The representative of Japan also wondered whether the word "materially" in paragraph 2 of Article 7 should be interpreted in the same manner as the word "material" in paragraph 2 of Article 33 of the Uniform Law on International Sale of Goods.

105. The representative of Kenya pointed out that while the terms "offeror" and "offeree" were used in Articles 4, 5 and 8, in Article 9 the terms "offeror" and "acceptor" were employed. In order to avoid confusion the same terminology should be used throughout.

106. The representative of the USSR, referring to paragraph 3 of Article 5, thought it was inappropriate to provide in a law that an indication that the offer was firm or irrevocable might be "implied from the circumstances, the preliminary negotiations, any practices which the parties have established between themselves or usage." It was for the offer itself to indicate clearly that it was firm or irrevocable. With regard to Article 7, the representative of the USSR suggested that the possibility of regarding a contract as having been concluded when the acceptance contained additions to, or limitations or modifications of,

the offer should be excluded. Concerning Article 13 he disagreed with the definition of usage given therein, which could give rise to innumerable controversies. He added that, while his Government did not entirely reject the applicability of usages in commercial transactions, the priority of law must be established. The Uniform Law could not cover all cases; gaps should first be filled by applying the rules of national laws, and usage could apply in cases where a particular question was not regulated by law. Moreover, parties to the contract should not be allowed, at their discretion, to impose conditions for the application of usage. To do so would be contrary to rules of law; any usage applicable to a contract in matters regulated by mandatory rules of law should be specifically mentioned in the contract itself.

107. The representative of the United States stressed that usage in a particular trade formed an important part of the law regulating transactions within that trade. In the United States, and probably in other countries as well, the vast majority of contracts were made by businessmen without the help of lawyers, and those contracts relied heavily on the usages in the trade. However, he understood the difficulty of providing for the prevalence of usage over law.

108. The representative of Mexico, while he was in general agreement with the observations made by the representative of the USSR concerning usage, thought that UNCITRAL should contribute to clarifying the relationship between usage and law. In his view usage should never be contrary to legal principles, and international conventions should prevail over usage.

109. The representative of Hungary pointed out that while usage was important as to the substance of the contract after the conclusion of the contract itself, it was much less important in the process of formation of contracts; in the formation of contracts normally national law, rather than usage, prescribed the formalities to be followed.

110. The representative of Norway said that it was indispensable for traders to be able to avail themselves of trade usage. However, problems arose, especially in international trade, owing to the existence of different usages in different countries and in different branches of trade.

111. The representative of the USSR, wishing to clarify further his previous statement concerning usage, said that he did not advocate the elimination of usage from international trade and agreed that on matters not covered by either the Uniform Law or national law, customs and usage should be applied. However, he stressed that often the more powerful party invoked usage to the detriment of the weaker party and warned that usages were sometimes different even within the same country; such differences were much more pronounced in international trade (e.g. terms like f.o.b. were interpreted differently in different ports). The representative of the USSR observed that the parties to a contract should not be presumed to have intended to apply usages merely by implication; usage should be applicable only when both parties had clearly expressed their intention to be governed by it.

112. The representative of the United Arab Republic said that in his country usage could not prevail over imperative rules of law but could prevail over subsidiary legal provisions, especially in international trade.

113. The representative of Norway, referring to Article 10, said that in some instances the sales resistance of a buyer was too weak as compared to modern methods of salesmanship as, for example, in case of unsolicited offers. He criticized the wording of Article 10 on the ground that it would not permit national legislation to grant a buyer in those circumstances a period of reflection of, say, three days to one week, during which the acceptance might be revoked.

114. Commenting on paragraph 1 of Article 12, the representative of Hungary said that the wording of that paragraph showed that the Uniform Law had adopted the "communication" theory and not, a the representative of Italy had maintained, a solution midway between the "communication" and the "mailbox" theories.

ANNEX II

SUMMARY OF THE COMMENTS MADE DURING THE SECOND SESSION ON THE 1955 HAGUE CONVENTION ON THE LAW APPLICABLE TO THE INTERNATIONAL SALE OF GOODS

A. Comments of a general character

1. Several representatives expressed the view that while some of its provisions might be improved, the Hague Convention of 1955 was, in general, a satisfactory instrument (Argentina, Italy, Mexico, Spain, Tunisia, United Arab Republic and the observer of the International Chamber of Commerce).

2. In the opinion of the representative of Tunisia the Convention served a useful purpose eliminating conflicts which would otherwise arise. The representative of Italy stated that, although a certain amount of uncertainty still stemmed from the text of the Convention, its existence was a step in the direction of clarity.

3. The representative of Mexico expressed the view that ratification of the Convention by a greater number of countries would be a step towards international standardization. While it was true that some of its provisions were out of date, they were, nevertheless, objective, applicable to all sales and they protected the rights of both buyer and seller. The representatives of Argentina and Spain endorsed the views expressed by the representative of Mexico.

4. Several representatives advocated the ratification of the Convention (Argentina, Hungary, Italy, Mexico, Spain). In the view of the representative of Hungary, however, the Commission should first examine the text of the Convention before recommending to States its ratification. The representative of Japan informed the Commission that his Government had the Convention still under consideration and was not therefore in a position to indicate the Government's official view on the Convention. The representative of the United States of America, on the other hand, stated that his Government, at the present time, did not intend to ratify the Convention.

5. Regarding the need for, and applicability of, unified conflict rules, the representative of Romania considered that, since conflict rules were complementary to substantive rules, there was no need for a convention on private international law. The representative of the United Arab Republic considered, on the other hand, that the field of application of the Convention would become very limited if a uniform law on the international sale of goods were adopted by all countries of the world. The representative of the USSR stated that instead of the 1964 Conventions there should, as had been observed earlier, be elaborated a new instrument which would also include conflict rules. The elaboration of such an instrument acceptable to all or a majority of countries would exclude the need for a separate convention on the law applicable to the international sale of goods.

6. In the view of the representative of Norway, conflict rules would be needed even in the case of world-wide adoption of the Hague Convention of 1964 as the latter did not cover every aspect of international sale. This view was also supported by the observer of the International Chamber of Commerce on the grounds that the Hague Uniform Law on Sales, in accordance with article 8 of that Law, was not concerned, with several aspects of the contract, such as the formation and the validity of the contract or any of its provisions, and that, under article 4 of that Law, its designation as the law applicable to a contract did not affect the application of any mandatory rules of law which would have been applicable if the parties had not chosen the Uniform Law. In contrast with those provisions of the Hague Uniform Law on Sale, the designation of a law under the Hague Convention of 1955, as the law applicable to a contract, meant the designation of that law in its entirety including its mandatory rules, thus excluding the application of any provisions, even if mandatory, of any other law.

7. The inter-relation between the Hague Convention of 1955 and the Hague Conventions of 1964 was also mentioned by a number of representatives. The representative of Italy considered that further co-ordination of those Conventions would be needed if the Hague Conventions of 1964 entered into force. The representative of Czechoslovakia referred to the differences in paragraph 2 of article 2 of the Hague Convention of 1955 and article 3 of the Hague Uniform Law and expressed the view that the countries which had ratified the Hague Convention of 1955 would be unable to adhere to the 1964 Hague Conventions on Sale of Goods unless they made the declaration provided for in article IV of the latter. The same opinion was expressed by the observer of the International Chamber of Commerce.

8. A number of representatives were of the opinion that conflict rules and substantive rules should form part of the same instrument (Romania, USSR, Observer of the Hague Conference on Private International Law). The observer of the International Institute for the Unification of Private Law on the other hand, pointed out that the formation of a single instrument would be contrary to international practice. In the case of the Geneva Conventions on bills of exchange and cheques, for instance, the two sets of rules were contained in separate conventions. Inclusion of both kinds of rules in a single convention might prevent a State which has objections to either set of rules from ratifying such a Convention.

B. Comments on the text of the Convention

Article 1

This Convention shall apply to international sales of goods.

It shall not apply to sales of securities, to sales of ships and of registered boats or aircraft, or to sales upon judicial order or by way of execution. It shall apply to sales based on documents.

For the purposes of this Convention, contracts to deliver goods to be manufactured or produced shall be placed on the same footing as sales, provided the party who assumes delivery is to furnish the necessary raw materials for their manufacture or production.

The mere declaration of the parties, relative to the application of a law or the competence of a judge or arbitrator, shall not be sufficient to confer upon a sale the international character provided for in the first paragraph of this article.

Comments

9. All comments made in connexion with Article 1 related to the first paragraph of this Article and concerned the necessity for a definition of international sale of goods.

10. The representative of the USSR considered that the international sale of goods should be defined in order to make it clear what relationships the Convention sought to regulate. The representative of the United Arab Republic, endorsing the view expressed by the representative of the USSR, wondered whether the definition contained in the 1964 Uniform Law on the International Sale of Goods could be applied.

11. The representative of Italy expressed the view that the absence of definition was probably intentional because the objective criteria contained in the Convention, such as the receipt of an offer or the existence of an establishment, clearly defined the cases in which the Convention was to be applied. The observer of the Hague Conference confirmed that, as reported by the Rapporteur of the competent Committee of the Hague Conference, a definition of the international sale of goods was omitted deliberately because it was considered that the other provisions of the Convention clearly defined its field of application.

Article 2

A sale shall be governed by the domestic law of the country designated by the Contracting Parties.

Such designation must be contained in an express clause, or unambiguously result from the provisions of the contract.

Conditions affecting the consent of the parties to the law declared applicable shall be determined by such law.

Comments

12. In connexion with the first paragraph of Article 2, the representative of Hungary held the view that the unrestricted autonomy of the parties to designate the law of the contract, favoured the stronger party. He considered, however, that the time was not yet ripe for restricting or abolishing that autonomy.

13. The question of renvoi was raised by the representative of Czechoslovakia who regretted the use of the expression "domestic law" instead of "substantive domestic law", since the present wording did not exclude the application of the conflict rules of the law designated by the parties. The representative of Hungary pointed out that, in his opinion, when the parties had designated the law

applicable to their contract, the application of the conflict rules of that law was excluded. Such conflict rules would, however, apply if the law defined in article 3 of the Convention was to be applied.

14. The observer of the Hague Conference stated that the term "domestic law", in contrast with the term "law" that included conflict rules also, was substantive law excluding rules of conflict. The term had been chosen precisely in order to exclude renvoi. The representative of Italy considered that the distinction between the two terms mentioned by the observer of the Hague Conference was not clear to Italian jurists since the equivalent Italian words did not make that distinction. The representative of France endorsed the meaning given by the observer of the Hague Conference to the word "domestic". The representative of Hungary emphasized the importance of using in conventions terms having the same meaning in all languages.

15. With regard to the second paragraph of article 2, the representative of Czechoslovakia pointed out that the provisions of this paragraph excluded the implied choice of law or a partial choice of a law, in contrast with the Hague Uniform Law on the International Sale of Goods. According to article 3 of the Uniform Law, the parties to a contract were free to exclude, expressly or implicitly, the application of that law entirely or partially.

Article 3

In default of a law declared applicable by the parties under the conditions provided in the preceding article, a sale shall be governed by the domestic law of the country in which the vendor has his habitual residence at the time when he receives the order. If the order is received by an establishment of the vendor, the sale shall be governed by the domestic law of the country in which the establishment is situated.

Nevertheless, a sale shall be governed by the domestic law of the country in which the purchaser has his habitual residence, or in which he has the establishment that has given the order, if the order has been received in such country, whether by the vendor or by his representative, agent or commercial traveller.

In case of a sale at an exchange or at a public auction, the sale shall be governed by the domestic law of the country in which the exchange is situated or the auction takes place.

Comments

16. The representative of Czechoslovakia expressed his agreement with the first paragraph of article 3 and stated that the General Conditions of the CMEA also provided for the application of the law of the seller in cases where questions were not settled by the General Conditions themselves.

17. Several representatives were of the opinion that the provisions of the second paragraph of article 3, rendering, in certain cases, the law of the buyer applicable, did not ensure equality between the parties. The representative of Iran

pointed out that sales were usually made in the country of the seller. But even if the contract had been concluded in the country of the buyer, the law of the stronger party - i.e. that of the seller - would apply, since the seller could rely on the escape clause contained in article 2 of the Convention.

18. On the other hand, the representative of Italy expressed the opinion that in many cases, especially where the seller was interested in obtaining a large order, contracts were concluded between the buyer and the agent or representative of the seller in the country of the buyer. The representative of France stated that the application of the law of the buyer resulted almost always in the application of the lex fori. He further stated that the application of the law of the buyer did not give preference to the buyer since the laws of all countries sought to give equal rights to seller and buyer. The representative of Iran, however, expressed the opinion that the application of the law of the country of the seller by the judge of the buyer's country might cause practical difficulties, which would not be the case if he had to apply the lex fori.

19. The representative of Iran expressed the view that it would have been better if the applicable law were the law of the place where the contract was concluded instead of that of the place where the order was given. The observer of the Hague Conference noted that the place of the conclusion of a contract was one of the most controversial questions. It was for that reason that the law of the place where the order was given was chosen in the Convention. The usefulness of eliminating the criterion of the place where the contract was concluded was also pointed out by the representative of Italy.

20. The representative of the USSR considered that the terms "order" and "given the order" should be clarified and the point at which an order was to be deemed to have been given should be specified.

Article 4

> In the absence of an express clause to the contrary, the domestic law of the country in which inspection of goods delivered pursuant to a sale is to take place shall apply in respect of the form in which and the periods within which the inspection must take place, the notifications concerning the inspection and the measures to be taken in case of refusal of the goods.

Comments

21. The representative of the USSR considered that since inspection might take place in two stages, a preliminary inspection of goods in the country of the seller and a final one in the country of the buyer, it should be made clear in article 4 which inspection was intended.

Article 5

> This Convention shall not apply to:
>
> 1. The capacity of the parties;

2. The form of the contract;

3. The transfer of ownership, provided that the various obligations of the parties, and especially those relating to risks, shall be subject to the law applicable to the sale pursuant to this Convention;

4. The effects of the sale as regards all persons other than the parties.

Comments

22. In connexion with sub-paragraph 2 of article 5, the representative of the USSR suggested that article 5 should be expanded to include in sub-paragraph 2 the words "and procedures for their signing", and explained that the law of the USSR provided for special procedures for signing international sale contracts.

23. The representative of the USSR, commenting on the second paragraph of article 10 and the fourth paragraph of article 12 of the Convention, said that they were contrary to the 1960 United Nations General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 /XV/ of 14 December 1960) and that their provisions, therefore, could not be included in the international convention.

24. The representative of the USSR also observed that the Convention should not exclude the possibility of applying any conflict rules which might have been, or might in the future be, established by other international agreements.

ANNEX III

REPRESENTATIVES OF MEMBERS OF THE COMMISSION a/

ARGENTINA

Representative: Sr. Gervasio Ramón Carlos Colombres
Professeur à la Faculté de Droit
Université de Buenos Aires

Alternate: Mr. Luis Reyna Corvalan, Attaché
Mission Permanente de la République Argentine
auprès des Nations Unies, Genève

AUSTRALIA

Representative: Mr. Anthony Mason, Q.C.
Solicitor-General for the Commonwealth
of Australia

Alternates: Mr. Kevin William Ryan
Senior Trade Commissioner
Permanent Mission of Australia, Geneva

Mr. K. de Rossignol
Trade Commissioner, Australian Embassy
Paris

Adviser: Mr. P. Peterson
Third Secretary
Australian Embassy, Vienna

BELGIUM

Representative: Monsieur le Ministre Albert Lilar
Professeur à la Faculté de Droit et
à la Faculté des Sciences économiques
et sociales à l'Université de Bruxelles

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

BELGIUM (continued)

Alternates:	Mr. P. Jenard Directeur d'administration au Ministère des Affaires étrangères et au commerce extérieur
	Madame Suzanne Oschinsky Premier Conseiller Ministère de la Justice
Advisers:	Mr. Leonard Magistrat délégué au Ministère de la Justice
	Mr. Debrulle Secretaire d'administration Ministère de la Justice

BRAZIL

Representative:	Mr. Nehemias Gueiros Professeur de droit civil à la Faculté de Droit, Recife Président de la Fédération Interamericaine des Avocats (Washington D.C.)

CHILE

Representative:	Mr. Eugenio Cornejo Fuller Decano de la Facultad de Ciencias Jurídicas y Sociales de la Universidad Católica de Valparaiso
Alternate:	Mr. Carlos de Costa-Nora Segundo Secretario de la Misión Permanente en Ginebra

COLOMBIA

CONGO (DEMOCRATIC REPUBLIC OF)

CZECHOSLOVAKIA

Representative:	Mr. Rudolf Bystricky Faculté de Droit Université Charles Prague
Alternate:	Mr. Ludek Kopac Conseiller juridique Ministère de Commerce étrangère, Prague
Advisers:	Mr. Zdenek Kucera Professeur agrégé Université Charles Prague
	Mr. Jiri Pleticha Second Secretary Ministry of Foreign Affairs

FRANCE

Representative:	Mr. René David Professeur à la Faculté de droit et des Sciences économiques de Paris
Alternate:[b/]	Mr. Jacques Baudoin Sous-directeur des Affaires civiles et du Sceau au Ministère de la Justice
Advisers:	Mr. Jacques Lemontey Magistrat au Bureau du Droit européen et international Ministère de la Justice
	Mr. J.P. Plantard Magistrat au Bureau du Droit européen et international Ministére de la Justice
	Mr. Philippe Petit Secrétaire des Affairs étrangères, Service Juridique Ministère des Affairs étrangères

GHANA

Representative:	Mr. Emmanuel Kodjoe Dadzie Ambassador Ministry of External Affairs

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b/ Representative of France from 3 to 9 March and 17 to 23 March during the absence of Mr. René David.

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ANNEX IV

SECRETARIAT OF THE COMMISSION

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Director of the General Legal Division
Office of Legal Affairs

Mr. Paolo Contini
Secretary of the Commission
Chief, International Trade Law Branch

Mr. Peter Katona
Assistant Secretary of the Commission
Senior Legal Officer

Mr. P. Raton
Legal Affairs Liaison Officer
Geneva

Mr. Willem Vis
Assistant Secretary of the Commission
Senior Legal Officer

Mrs. Jelena Vilus
Assistant Secretary of the Commission
Legal Officer

ANNEX V

OBSERVERS

A. United Nations organs

Economic Commission for Europe	Mr. Henri Cornil General Economic Research Division
United Nations Conference on Trade and Development	Mr. W.W. Malinowski Director Division for Invisibles
	Mr. Karel V. Svec Deputy Director Trade Policies Division
	Mr. Samuel Okumribido Senior Legal Officer
United Nations Institute for Training and Research	Mr. Ahmed Boumendjel Officer-in-Charge of UNITAR at Geneva

B. Specialized agencies

Food and Agriculture Organization of the United Nations	Mr. Lamartine Yates Regional Representative Europe
Inter-Governmental Maritime Consultative Organization	Mr. Thomas A. Mensah Head of the Legal Division
	Viscount Dunrossil External Relations Officer
International Monetary Fund	Mr. Robert Effros Counsellor for Legislation in the Legal Department

C. Intergovernmental organizations

Commission des Communautes Européennes	Mr. Houschild Chef de Division Direction générale du Marché intérieur et du Rapprochement des Legislations
	Mr. Thierry Cathala Administrateur Principal Direction générale du Marché intérieur et du Rapprochement des Legislations
Council for Mutual Economic Assistance	Mr. Michael Koudriashev Chief Legal Office
	Mr. Peter Graba Expert of the Foreign Trade Department
Council of Europe	Mr. R. Muller Head of Service Directorate of Legal Affairs
Council of European Communities	Mr. Daniel Vignes Conseiller au Service Juridique
	Mr. Antonio Sacchettini Conseiller adjoint Service Juridique
Hague Conference on Private International Law	Mr. M.H. van Hoogstraten Secretary-General
Inter-American Juridical Committee	Mr. José Joaquin Caicedo Castilla Acting Chairman
International Institute for the Unification of Private Law	Mr. Mario Matteucci Secretary-General
	Professor Otto Riese Chairman International Sales Committee
Organization of American States	Mr. Raúl C. Migone European Representative
	Mr. Georges D. Landau Representative of the Secretary-General
United International Bureaux for the Protection of Intellectual Property	Mr. Roger Harben Assistant External Relations Service
	Mr. Ibrahima Thiam Assistant External Relations Service

D. International non-governmental organizations

International Chamber of Commerce	Mr. Bernard S. Wheble Président Commission de Technique et Pratiques Bancaires
	Mr. Lars A.E. Hjerner Rapporteur Commission des Pratiques Commerciales Internationales
International Chamber of Shipping	Mr. S.A. Cotton Secretary of the Maritime Committee
International Law Association	Mr. Michael Brandon Representative to the United Nations
International Bar Association	Mr. Michael Brandon Representative to the United Nations

ANNEX VI

RESOLUTION 2205 (XXI) ADOPTED BY THE GENERAL ASSEMBLY
ON 17 DECEMBER 1966

2205 (XXI). Establishment of the United Nations Commission on International Trade Law

The General Assembly,

Recalling its resolution 2102 (XX) of 20 December 1965, by which it requested the Secretary-General to submit to the General Assembly at its twenty-first session a comprehensive report on the progressive development of the law of international trade,

Having considered with appreciation the report of the Secretary-General on that subject, a/

Considering that international trade co-operation among States is an important factor in the promotion of friendly relations and consequently, in the maintenance of peace and security,

Recalling its belief that the interests of all peoples, and particularly those of developing countries, demand the betterment of conditions favouring the extensive development of international trade,

Reaffirming its conviction that divergencies arising from the laws of different States in matters relating to international trade constitute one of the obstacles to the development of world trade,

Having noted with appreciation the efforts made by intergovernmental and non-governmental organizations towards the progressive harmonization and unification of the law of international trade by promoting the adoption of international conventions, uniform laws, standard contract provisions, general conditions of sale, standard trade terms and other measures,

Noting at the same time that progress in this area has not been commensurate with the importance and urgency of the problem, owing to a number of factors, in particular insufficient co-ordination and co-operation between the organizations concerned, their limited membership or authority and the small degree of participation in this field on the part of many developing countries.

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a/ Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 88, documents A/6396 and Add.1 and 2.

Considering it desirable that the process of harmonization and unification of the law of international trade should be substantially co-ordinated, systematized and accelerated and that a broader participation should be secured in furthering progress in this area,

Convinced that it would therefore be desirable for the United Nations to play a more active role towards reducing or removing legal obstacles to the flow of international trade,

Noting that such action would be properly within the scope and competence of the Organization under the terms of Article 1, paragraph 3, and Article 13, and of Chapters IX and X of the Charter of the United Nations,

Having in mind the responsibilities of the United Nations Conference on Trade and Development in the field of international trade,

Recalling that the Conference, in accordance with its General Principle Six b/ has a particular interest in promoting the establishment of rules furthering international trade as one of the most important factors in economic development,

Recognizing that there is no United Nations organ which is both familiar with this technical legal subject and able to devote sufficient time to work in this field,

I

Decides to establish a United Nations Commission on International Trade Law (hereinafter referred to as the Commission), which shall have for its object the promotion of the progressive harmonization and unification of the law of international trade, in accordance with the provisions set in section II below;

II

ORGANIZATION AND FUNCTIONS OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

1. The Commission shall consist of twenty-nine States, elected by the General Assembly for a term of six years, except as provided in paragraph 2 of the present resolution. In electing the members of the Commission, the Assembly shall observe the following distribution of seats:

(a) Seven from African States;

(b) Five from Asian States;

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b/ See *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No.: 64.II.B.11), annex A.I.1, p. 18.

(c) Four from Eastern European States;

(d) Five from Latin American States;

(e) Eight from Western European and other States.

The General Assembly shall also have due regard to the adequate representation of the principal economic and legal systems of the world, and of developed and developing countries.

2. Of the members elected at the first election, to be held at the twenty-second session of the General Assembly, the terms of fourteen members shall expire at the end of three years. The President of the General Assembly shall select these members within each of the five groups of States referred to in paragraph 1 above, by drawing lots.

3. The members elected at the first election shall take office on 1 January 1968. Subsequently, the members shall take office on 1 January of the year following each election.

4. The representatives of members on the Commission shall be appointed by Member States in so far as possible from among persons of eminence in the field of the law of international trade.

5. Retiring members shall be eligible for re-election.

6. The Commission shall normally hold one regular session a year. It shall, if there are no technical difficulties, meet alternately at United Nations Headquarters and at the United Nations Office at Geneva.

7. The Secretary-General shall make available to the Commission the appropriate staff and facilities required by the Commission to fulfil its task.

8. The Commission shall further the progressive harmonization and unification of the law of international trade by:

(a) Co-ordinating the work of organizations active in this field and encouraging co-operation among them;

(b) Promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws;

(c) Preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field;

(d) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade;

(e) Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade;

(f) Establishing and maintaining a close collaboration with the United Nations Conference on Trade and Development;

(g) Maintaining liaison with other United Nations organs and specialized agencies concerned with international trade;

(h) Taking any other action it may deem useful to fulfil its functions;

9. The Commission shall bear in mind the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade.

10. The Commission shall submit an annual report, including its recommendations, to the General Assembly and the report shall be submitted simultaneously to the United Nations Conference on Trade and Development for comments. Any such comments or recommendations which the Conference or the Trade and Development Board may wish to make, including suggestions on topics for inclusion in the work of the Commission, shall be transmitted to the General Assembly in accordance with the revelant provisions of Assembly resolution 1995 (XIX) of 30 December 1964. Any other recommendations relevant to the work of the Commission which the Conference or the Board may wish to make shall be similarly transmitted to the General Assembly.

11. The Commission may consult with or request the services of any international or national organization, scientific institution, and individual expert, on any subject entrusted to it, if it considers such consultation or services might assist it in the performance of its functions.

12. The Commission may establish appropriate working relationships with intergovernmental organizations and international non-governmental harmonization and unification of the law of international trade.

III

1. Requests the Secretary-General, pending the election of the Commission, to carry out the preparatory work necessary for the organization of the work of the Commission and, in particular:

(a) To invite Member States to submit in writing before 1 July 1967, taking into account in particular the report of the Secretary-General, comments on a programme of work to be undertaken by the Commission in discharging its functions under paragraph 8 of section II above;

(b) To request similar comments from the organs and organizations referred to in paragraph 8 (f) and (g) and in paragraph 12 of section II above;

2. Decides to include an item entitled "Election of the members of the United Nations Commission on International Trade Law" in the provisional agenda of its twenty-second session.

1497th plenary meeting,
17 December 1966.

ANNEX VII

LIST OF DOCUMENTS OF THE SECOND SESSION

A. GENERAL SERIES

A/CN.9/11, Corr.1, Add.1, 2 and 3[a/] . .	Replies and studies by States concerning the Hague Conventions of 1964: note by the Secretary-General
A/CN.9/12, Add.1, 2, 3 and 4[a/]	Replies by States concerning the Hague Convention of 1955 on the law applicable to international sale of goods: note by the Secretary-General
A/CN.9/13 and Add.1	Provisional agenda
A/CN.9/14	Incoterms and other trade terms: note by the Secretary-General
A/CN.9/15 and Add.1	Bankers' commercial credits: note by the Secretary-General
A/CN.9/16, Add.1 and 2	Time-limits and limitations (prescription) in the field of international sale of goods: note by the Secretary-General
A/CN.9/17	International sale of goods. The Hague Conventions of 1964. Analysis of the replies and studies received from Governments: report of the Secretary-General
A/CN.9/18	General conditions of sale and standard contracts: report of the Secretary-General
A/CN.9/19	Negotiable instruments: note by the Secretary-General
A/CN.9/20 and Add.1	Preliminary study of guarantees and securities as related to international payments: report of the Secretary-General
A/CN.9/21 and Corr.1	International commercial arbitration: report of the Secretary-General

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a/ This document was issued after the end of the second session.

A/CN.9/22, Add.1 and 2[a/]	The United Nations Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards
A/CN.9/23	Consideration of inclusion of international shipping legislation among the priority topics in the work programme
A/CN.9/24, Add.1 and 2	Register of organizations and register of texts: note by the Secretary-General
A/CN.9/25	Co-ordination of the work of organizations active in international trade law: report of the Secretary-General
A/CN.9/26	Working relationships and collaboration with other bodies: note by the Secretary-General
A/CN.9/27	Training and assistance in the field of international trade law: report of the Secretary-General
A/CN.9/28	Consideration of the possibility of issuing a yearbook: note by the Secretary-General
A/CN.9/29	Agenda

B. LIMITED SERIES

A/CN.9/L.7	Programme of work until the end of 1972: proposal by the French delegation
A/CN.9/L.8	General conditions of sale and standard contracts: proposal by the United States of America concerning the role of the United Nations Commission on International Trade Law (UNCITRAL) in furthering the use of general conditions, standard contracts uniform trade terms as aids to uniformity
A/CN.9/L.9	The Hague Conventions of 1964: proposal by the delegation of the Union of Soviet Socialist Republics concerning the unification of rules of law regulating the international sale of goods

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a/ This document was issued after the end of the second session.

A/CN.9/L.10	International sale of goods. The Hague Conventions of 1964 and the Hague Convention on Applicable Law of 1955; draft resolution proposed by the delegations of Brazil, Ghana, Hungary, India, United States of America
A/CN.9/L.11	International sale of goods. The Hague Conventions of 1964 and the Hague Convention on Applicable Law of 1955: draft resolution approved by Committee I at its 10th meeting
A/CN.9/L.12	Report of Committee II to the Commission
A/CN.9/L.13	Bank guarantees: proposal by the Hungarian delegation concerning the preparation of uniform rules and practice relating to bank guarantees
A/CN.9/L.14	Time-limits and limitations (prescription) in the field of international sale of goods
A/CN.9/L.15, Corr.1 and Add.1 . . .	Report of Committee I to the Commission
A/CN.9/L.16, Corr.1, 2,[b/] 3, . . . Add.1, Corr.1, Add.2, 3, 4, 5, 6, Rev.1, 7, 8, 9, 10, 11, 12 and 13	Draft report of the United Nations Commission on International Trade Law on the work of its second session
A/CN.9/L.17	Consideration of inclusion of international shipping legislation among the priority topics in the work programme: draft resolution proposed by Ghana, India
A/CN.9/L.17/Rev.1	Consideration of inclusion of international shipping legislation among the priority topics in the work programme: draft resolution proposed by Argentina, Brazil, Chile, Ghana, India, Iran, Kenya, Mexico, the United Republic of Tanzania, Tunisia and the United Arab Republic

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b/ In Russian only.

A/CN.9/L.17/Rev.2	Consideration of inclusion of international shipping legislation among the priority topics in the work programme: draft resolution proposed by Argentina, Belgium, Brazil, Chile, Ghana, India, Iran, Kenya, Mexico, Spain, United Republic of Tanzania, Tunisia and United Arab Republic
A/CN.9/L.18	Consideration of inclusion of international shipping legislation among the priority topics in the work programme: Belgium, Italy: draft resolution

C. INFORMATION SERIES

A/CN.9/INF.2	List of participants

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