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

2-13 April 1973

GENERAL ASSEMBLY

OFFICIAL RECORDS: TWENTY-EIGHTH SESSION

SUPPLEMENT No. 17 (A/9017)

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New York, 1973

NOTE

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

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INTRODUCTION

The present report of the United Nations Commission on International Trade Law covers the Commission's sixth session, held at Geneva from 2 to 13 April 1973.

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

CHAPTER I

ORGANIZATION OF THE SESSION

A. Opening

1. The United Nations Commission on International Trade Law (UNCITRAL) opened its sixth session on 2 April 1973. The session was opened on behalf of the Secretary-General by Mr. Vittorio Winspeare Guicciardi, Director-General of the United Nations Office at Geneva.

B. Membership and attendance

2. Under General Assembly resolution 2205 (XXI), by which UNCITRAL was established, the Commission consists of 29 States, elected by the Assembly. The present members of the Commission, elected on 30 October 1967 and 12 November 1970, are the following States: 1/

Argentina*	Mexico*
Australia*	Nigeria
Austria	Norway
Belgium*	Poland
Brazil*	Romania*
Chile	Singapore
Egypt	Spain*
France	Syrian Arab Republic*
Ghana	Tunisia*
Guyana	Union of Soviet Socialist Republics
Hungary*	United Kingdom of Great Britain and Northern Ireland
India*	United Republic of Tanzania
Iran*	United States of America*
Japan	Zaire*
Kenya*	

3. With the exception of Tunisia and Zaire, all members of the Commission were represented at the session.

1/ Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. However, with respect to the initial election, the terms of 14 members, selected by the President of the Assembly, expired at the end of three years (31 December 1970). Accordingly, the General Assembly, at its twenty-fifth session, elected 14 members to serve for a full term of six years, ending on 31 December 1976. The terms of the 15 members marked with an asterisk will end on 31 December 1973. The terms of the other 14 members will end on 31 December 1976.

4. 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);
Economic Commission for Latin America (ECLA);
United Nations Conference on Trade and Development (UNCTAD).

(b) Specialized agencies

Inter-Governmental Maritime Consultative Organization (IMCO);
International Monetary Fund (IMF).

(c) Intergovernmental organizations

Commission of the European Communities; Council for Mutual Economic Assistance (CMEA); Hague Conference on Private International Law; International Institute for the Unification of Private Law (UNIDROIT); League of Arab States; World Intellectual Property Organization (WIPO).

(d) International non-governmental organizations

International Bar Association, International Chamber of Commerce (ICC);
International Law Association (ILA).

C. Election of officers

5. At its 126th and 127th meetings, on 2 April 1973, the Commission elected the following officers 2/ by acclamation:

Chairman	Mr. Mohsen Chafik (Egypt)
Vice-Chairman	Mr. László Réczei (Hungary)
Vice-Chairman	Mr. Akira Takakuwa (Japan)
Vice-Chairman	Mr. Paul Jenard (Belgium)
Rapporteur	Mr. Nehemias Gueiros (Brazil)

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, so that each of the five groups of States listed in General Assembly resolution 2205 (XXI), section II, paragraph 1, will be included among the officers of the Commission (see report of the United Nations Commission on International Trade Law on the work of its first session, Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), para. 14 (Yearbook of the United Nations Commission on International Trade Law, Vol. I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, chap. I, para. 14).

D. Agenda

6. The agenda of the session as adopted by the Commission at its 126th meeting, on 2 April 1973, was as follows:

1. Opening of the session
2. Election of officers
3. Adoption of the agenda; tentative schedule of meetings
4. International sale of goods:
 - (a) Uniform rules governing the international sale of goods;
 - (b) General conditions of sale and standard contracts
5. International payments:
 - (a) Draft uniform law on international bills of exchange and international promissory notes;
 - (b) Bankers' commercial credits
6. International legislation on shipping
7. International commercial arbitration
8. Training and assistance in the field of international trade law
9. Multinational enterprises
10. Establishment of a union for jus commune in matters of international trade
11. Future work; working methods
12. Other business
13. Date and place of seventh session
14. Adoption of the report of the Commission

E. Decisions of the Commission

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

F. Adoption of the report

8. The Commission adopted the present report at its 142nd meeting, on 13 April 1973.

CHAPTER II

INTERNATIONAL SALE OF GOODS

A. Uniform rules governing the international sale of goods

9. The Commission, at its second session, established a Working Group on the International Sale of Goods and requested it to ascertain which modifications of the text of the Uniform Law on the International Sale of Goods (ULIS), annexed to the 1964 Hague Convention, might render that Convention capable of wider acceptance, or whether it would be necessary to elaborate a new text for this purpose. 3/

10. At its fourth session, the Commission decided that, "until the new text of a uniform law or the revised text of ULIS has been completed, the Working Group should submit a progress report on its work to each session of the Commission, and any comments or recommendations which representatives may make at the sessions on issues set out in the progress reports shall be considered by the Working Group in the preparation of the final draft". 4/

11. At the present session, the Commission had before it the progress report of the Working Group on the International Sale of Goods on its fourth session, held in New York from 22 January to 2 February 1973 (A/CN.9/75). 5/

12. The report was introduced by the Chairman and the Rapporteur of the fourth session of the Working Group. In the course of that introduction it was pointed out that the Working Group had made considerable progress in its work at that session by completing the revision of chapter III of ULIS providing for the obligations of the seller. Significant results as to the simplification of the law had been achieved. In particular, it was mentioned that on the basis of a study by the Secretary-General the Working Group had succeeded in consolidating in a single unified system the various provisions of ULIS relating to the remedies of the buyer. 6/ It was noted that the consolidation of six separate remedial systems that appeared in ULIS achieved a substantial simplification of the law, and solved problems of the separate remedial systems, which resulted from overlapping and inconsistent provisions.

3/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618), para. 38, subpara. 3 (a) (Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, chap. II, para. 38, subpara. 3 (a)).

4/ Ibid., Twenty-sixth Session, Supplement No. 17 (A/8417), para. 92, subpara. 1 (c) (Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971 (United Nations publication, Sales No.: E.72.V.4), part one, chap. II, para. 92, subpara. 1 (c)).

5/ The Commission considered the report at its 127th meeting, on 2 April 1973.

6/ The study by the Secretary-General appears as annex II to the report of the Working Group (A/CN.9/75).

13. All representatives who spoke on the subject expressed their appreciation for the progress made and commended the Working Group for the results of its work.

14. Several representatives stated their views in respect of the question raised at the session of the Working Group whether the time-limit established in article 39, paragraph 1, of ULIS conflicted with the rules on limitation of article 10 (2) of the draft Convention on Prescription (Limitation) in the International Sale of Goods, with special reference to situations in which defects in goods appeared after their delivery to the buyer. Some representatives held the view that these provisions were basically different. Other representatives were of the opinion that the above provisions of ULIS and of the draft convention on prescription, while technically distinct, presented similar issues of policy which should be brought into conformity. One representative expressed the opinion that, in view of its complexity, this question required deeper analysis and should, therefore, be considered at a later session. Another representative suggested that the problem should be brought to the attention of the diplomatic conference on the draft convention on prescription. Drafting changes addressed to this question were also suggested.

Decision of the Commission

15. The Commission, at its 142nd meeting, on 13 April 1973, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Takes note with appreciation of the report of the Working Group on the International Sale of Goods on the work of its fourth session;
2. Recommends that the Working Group consider the comments and proposals made at the sixth session of the Commission;
3. Requests the Working Group to continue its work under the terms of reference set forth by the Commission at its second session and complete that work expeditiously.

B. General conditions of sale and standard contracts

16. The Commission, at its second session, decided to commence its work in this field of law by ascertaining whether certain general conditions of sale prepared under the auspices of the Economic Commission for Europe could be utilized in other regions. ^{7/} At its third session, the Commission extended its work to the examination of the feasibility of developing general conditions embracing a wide

^{7/} Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618), para. 60, subpara. 1 (Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, chap. II, para. 60, subpara. 1).

scope of commodities and requested the Secretary-General to commence a study of the subject. 8/

17. The Secretary-General submitted to the Commission at its fourth session a report including the first phase of the study (A/CN.9/54). At the fifth session the Secretary-General presented a progress report to the Commission (A/CN.9/69). In view of the progress made in this study, the Commission, at that session, decided to defer final action regarding the promotion of the general conditions drawn up under the auspices of the Economic Commission for Europe and requested the Secretary-General to submit to the Commission at its sixth session his final study on the feasibility of developing general conditions embracing a wide scope of commodities and, to the extent feasible, to commence the preparation of guidelines on this subject and of a draft set of such general conditions. 9/

18. The Commission had before it a report of the Secretary-General containing his final study (A/CN.9/78). All representatives who spoke on the subject commended the study.

19. Several representatives stressed the importance of the work on the subject. It was stated that the existence of general conditions prepared under the auspices of the United Nations would facilitate international trade and eliminate fears on the part of economically weaker parties. One representative expressed the view that such a formulation, while promoting certainty in international transactions, could also contribute to a fair balancing of the rights of seller and buyer. Another representative pointed out that in international trade, especially in East-West trade, both parties often proposed their own detailed forms; as a result substantial time was spent in reaching agreement on the provisions of the contract. A set of uniform conditions could simplify this procedure.

20. Some representatives, however, expressed doubts in connexion with the subject. One of these representatives questioned whether the subject was within the terms of reference of the Commission. He pointed out that the Commission had as its main task the unification of law and that the question of general conditions, therefore, was only marginal to that task. Another representative expressed the view that many questions could better be served by the revision of ULIS and that it was doubtful whether general conditions drawn up by the Commission would be widely used. However, in the opinion of that representative, such a formulation might nevertheless help existing organizations, such as trade associations, in improving their own standard contracts. He suggested that the secretariat should be given wide flexibility as to approach in order to expedite the completion of the project.

21. One observer was of the opinion that in view of the special problems presented by various commodities, such as perishable goods, uniform rules could only be useful for the sale of those commodities in respect of which there were no specific

8/ Ibid., Twenty-fifth Session, Supplement No. 17 (A/8017), para. 102, subpara. (b) (Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, chap. III, para. 102, subpara. (b)).

9/ Ibid., Twenty-seventh Session, Supplement No. 17 (A/8717), para. 43 (Yearbook of the United Nations Commission on International Trade Law, Volume III: 1972 (United Nations publication, Sales No.: E.73.V.6), part one, chap. II, para. 43).

general conditions. He pointed out that the ECE general conditions, although of regional character, were drawn up with the assistance of experts from different parts of the world and, therefore, could be easily and quickly adjusted to the needs of other regions. One representative pointed out that, at a seminar held on general conditions, several delegations doubted that the ECE general conditions were widely used, even in Europe.

22. Most delegations who spoke on the issue agreed with the proposal, set forth in paragraph 199 of the report of the Secretary-General (A/CN.9/78), to set up a group of experts which would have as its object the preparation of a final draft of "general" general conditions. One representative suggested that the Secretariat entrust this task to an expert who would be helped by representatives of different trade organizations.

23. Some representatives suggested that, instead of "general" general conditions, the Commission should use the term "uniform" or "global" general conditions, or another appropriate term.

Decision of the Commission

24. The Commission at its 141st meeting, on 11 April 1973, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Requests the Secretary-General:

(a) To continue work on the preparation of a set of uniform general conditions; .

(b) To co-operate in this work with the regional economic commissions and with interested trade associations, chambers of commerce and similar organizations from different regions;

(c) To set up, and consult if considered necessary, a group of experts composed of representatives of the various organizations mentioned in subparagraph (b) above;

2. Further requests the Secretary-General to report to the Commission at its seventh session on the progress made in respect of this project.

CHAPTER III

INTERNATIONAL PAYMENTS

A. Negotiable instruments

(i) Draft uniform law on international bills of exchange and on international promissory notes

25. The Commission, at its fourth session, decided to proceed with work directed towards the preparation of uniform rules applicable to a special negotiable instrument for optional use in international transactions. To this end, the Commission requested the Secretary-General to prepare draft uniform rules accompanied by a commentary. 10/ In response to that decision, a report entitled "Draft Uniform Law on International Bills of Exchange and Commentary" (A/CN.9/67 and Corr.1) was placed before the Commission at its fifth session. The draft was concerned with bills of exchange in the narrow sense of the term and did not include within its scope promissory notes and cheques. At its fifth session, the Commission took note of the result of inquiries made by the Secretariat amongst banking and trade circles concerning the use and importance of promissory notes in international trade and requested the Secretary-General to modify the draft uniform law on international bills of exchange with a view to extending its application to international promissory notes. 11/ At the same session, the Commission established a Working Group 12/ and entrusted it with the preparation of a final draft uniform law on international bills of exchange and international promissory notes. 13/

26. At the present session, the Commission had before it the report of the Working Group on International Negotiable Instruments on the work of its first session (A/CN.9/77). The Working Group met in Geneva from 8 to 14 January 1973, and considered articles 12 to 40 of the draft uniform law relating to the transfer and

10/ Ibid., Twenty-sixth Session, Supplement No. 17 (A/8417), para. 35 (Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971 (United Nations publication, Sales No.: E.72.V.4), part one, chap. II, para. 35).

11/ Ibid., Twenty-seventh Session, Supplement No. 17 (A/8717), para. 61, subpara. 2 (c) (Yearbook of the United Nations Commission on International Trade Law, Volume III: 1972 (United Nations publication, Sales No.: E.73.V.6), part one, chap. II, para. 61, subpara. 2 (c)). The draft uniform law so modified, with commentary, is found in A/CN.9/WG.IV/WP.2.

12/ Ibid., para. 61, subpara. 1 (a). The Working Group on International Negotiable Instruments consists of the following eight members of the Commission: Egypt, France, India, Mexico, Nigeria, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.

13/ Ibid., para. 61, subpara. 1 (b).

negotiation of an international bill of exchange or an international promissory note (articles 12 to 22), the rights and liabilities of the signatories of such instruments (articles 27 to 40), and the definition and the rights of a "holder" and a "protected holder" (articles 5, 6 and 23 to 26). The Working Group reached conclusions on the substance of these articles and requested the Secretariat to prepare a revised draft which would reflect these conclusions and also deal with problems of terminology and style.

27. In its consideration of the report of the Working Group, 14/ the Commission expressed its appreciation to members of the Working Group for the progress achieved in this complex and technical subject.

28. Representatives who spoke on the subject expressed their appreciation for the draft uniform law prepared by the Secretariat and also for the valuable assistance rendered throughout the preparatory work by interested international organizations and banking and trade institutions. In the view of those representatives, the interaction thus achieved between law and practice was vital for the successful outcome of the Commission's work in this field and the collaboration with banking and trade circles should therefore be continued.

29. Some representatives drew attention to the importance of the legal terminology to be used in the proposed draft, particularly in connexion with the future interpretation of the proposed uniform law by the courts of countries having different legal systems. The view was expressed that, in this respect, the Secretariat draft gave too much emphasis to concepts and terms that were drawn from Anglo-American law. It was essential that the final draft uniform law establish a just equilibrium between the main systems of negotiable instrument law.

30. One representative, referring to the text prepared by the Secretariat, expressed the view that the definition of endorsement and the concepts of transfer, negotiation and "protected holder" should be reconsidered. In particular, the definition of endorsement should be linked more closely and explicitly with the concept of endorsee. With respect to the concepts of "transfer" and "negotiation", the uniform law should deal only with the effects of the transmission of an instrument by endorsement and leave the effects of transmission without endorsement and those of assignment to national law. The provision of article 26 of the draft, under which, if the obligor (defendant) establishes the existence of a defence, it falls to the holder (plaintiff) to prove that he is a protected holder, was probably unacceptable to civil law countries, since it was virtually impossible for the holder, under the procedure of these countries, to prove the negative fact that he took the instrument without knowledge of a claim or defence.

31. It was pointed out that the draft uniform law placed before the Working Group comprised concepts from both the civil law and common law systems and that, for the most part, the choice between diverging concepts or substantive rules had been made after thorough consultations with banking and trade circles and on the basis of inquiries through means of detailed questionnaires. Whilst this had led, in some instances, to the adoption of rules that were similar to those found in the common

14/ The Commission considered this subject in the course of its 127th and 131st meetings, held on 2 and 4 April 1973.

law statutes on negotiable instruments, in other instances rules found in the Geneva Uniform Law of 1930 had been followed, such as those relating to the effects of a forged endorsement or the effects consequent upon the failure to protest dishonour of a bill by non-acceptance or by non-payment or to give notice of such dishonour. On the other hand, the draft uniform law sought to avoid legal terms which could be understood only in one of the legal systems. For this reason, the draft employed, for instance, the term "protected holder" instead of the term "holder in due course" found in the common law statutes or the term "lawful holder" found in the Geneva uniform law.

32. Some representatives noted that the report of the Working Group suggested that the final draft might not use the term "negotiable" or "negotiation". They expressed the hope that the Working Group would reconsider the use of this term in the draft in view of the fact that it was well understood and defined in international banking practice.

33. The Commission was agreed that it should defer consideration of the substantive provisions of the draft uniform law until the Working Group had completed its work and submitted a final draft with commentary.

(ii) International cheques

34. The Commission, at its fifth session, also requested the Working Group to consider the desirability of preparing uniform rules applicable to international cheques and to report its conclusions to the Commission at a future session. ^{15/} The Working Group decided to defer consideration of this question until a future session in order to permit the Secretariat to make inquiries regarding the use of cheques in international payment transactions and the problems presented, under current commercial practice, by divergencies between the rules of the principal legal systems.

35. The Commission expressed agreement with this approach of the Working Group. Several representatives, pointing out that the use of detailed questionnaires and appropriate consultations with other international organizations and banking and trade institutions had proved to be invaluable during the preparatory stages of the work on the draft uniform law, urged that the same method of work should be used in respect of cheques.

Decision of the Commission

36. The Commission at its 141st meeting, on 11 April 1973, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Takes note with appreciation of the report of the Working Group on International Negotiable Instruments on the work of its first session;

^{15/} Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717), para. 61, subpara. 1 (c) (Yearbook of the United Nations Commission on International Trade Law, Volume III: 1972 (United Nations publication, Sales No.: E.73.V.6), part one, chap. II, para. 61, subpara. 1 (c)).

2. Requests the Working Group to continue its work under the terms of reference set forth by the Commission in the decision adopted at its fifth session 16/ and to complete that work expeditiously;

3. Requests the Secretary-General to carry out further work in connexion with the draft uniform law and with the inquiry to be conducted regarding the use of cheques in settling international payments, in consultation with the Commission's Study Group on International Payments composed of experts provided by interested international organizations and banking and trade institutions, and for these purposes to convene meetings as required.

B. Bankers' commercial credits

37. This subject is concerned with work carried out by the International Chamber of Commerce (ICC) regarding the standardization of procedures and practices employed in respect of commercial letters of credit. In 1933, ICC drew up the "Uniform Customs and Practice for Documentary Credits", which were revised by it in 1951 and 1962. A third revision is at present being carried out by ICC. At its previous sessions, 17/ the Commission stressed the importance of letters of credit in assuring payment for international trade transactions and expressed the opinion that the views of countries not represented in ICC should be taken into account by ICC in its work of revision.

38. At the present session, 18/ the Commission had before it a note by the Secretary-General reproducing in an annex the substantive parts of three reports of a working party of the Commission on Banking Technique and Practice of ICC,

16/ Ibid., para. 61.

17/ Ibid., Twenty-third Session, Supplement No. 16 (A/7216), paras. 23 and 28 (Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, chap. I); ibid., Twenty-fourth Session, Supplement No. 18 (A/7618), paras. 90-95 (Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970, part two, chap. II); ibid., Twenty-fifth Session, Supplement No. 17 (A/8017), paras. 119-126 (Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970, part two, chap. III); ibid., Twenty-sixth Session, Supplement No. 17 (A/8417), paras. 36-43 (Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971 (United Nations publication, Sales No.: E.72.V.4), part one, chap. II, A); and ibid., Twenty-seventh Session, Supplement No. 17 (A/8717), paras. 65 and 66 (Yearbook of the United Nations Commission on International Trade Law, Volume III: 1972 (United Nations publication, Sales No.: E.73.V.6), part one, chap. II, paras. 65 and 66).

18/ The Commission considered this subject in the course of its 132nd meeting, held on 5 April 1973.

setting forth the revisions proposed by it. The proposed revisions have been communicated to Governments and interested banking and trade institutions and, in accordance with previous decisions of the Commission, the comments received will be transmitted to ICC.

39. According to information received by the Secretariat, ICC intends to give further consideration to the text proposed by the working party of its Commission on Banking Technique and Practice in the light of comments received from its national committees and, through the Secretary-General of the United Nations, from Governments and from banking and trade institutions in countries not represented in ICC. It was also understood that ICC had decided to await the result of work at present being carried out in connexion with a combined transport document, made necessary by the carriage of goods by containers.

40. Several representatives expressed their regret that ICC had not sent an observer to be present at the discussion of a subject in which ICC was actively engaged.

41. The view was expressed that the revisions proposed by the ICC working party represented in general an amelioration of the 1962 text. It was hoped that the revision would adopt rules regarding documents that could be used effectively in transactions involving combined transport operations.

42. Several representatives expressed satisfaction at the increased co-operation between the Commission and ICC and between ICC and countries not represented in it.

43. In the view of many representatives, the Commission should at some stage examine closely the revision of "Uniform Customs" proposed by ICC. The Commission was agreed that, to this end, it should request the Secretariat to submit to it an analysis of observations on the proposed revision to be received by the Secretary-General.

44. Several representatives expressed the hope that ICC would submit to the Commission at the seventh session a progress report on its work in respect of bank guarantees.

Decision of the Commission

45. The Commission at its 132nd meeting, on 5 April 1973, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Takes note of the draft revision of the "Uniform Customs and Practice for Documentary Credits (1962)", proposed by a working party of the Commission on Banking Technique and Practice of the International Chamber of Commerce;

2. Requests the Secretary-General:

(a) To prepare an analysis of observations on the proposed revision received from Governments and from banking and trade institutions not represented in the International Chamber of Commerce;

(b) To ensure the continuing attendance and participation of representatives of the Commission's secretariat at deliberations of the International Chamber of Commerce;

3. Invites the International Chamber of Commerce to submit to the Commission, at future sessions:

(a) Progress reports in respect of its revision of "Uniform Customs (1962)" and of its work on contract and payment guarantees;

(b) The proposed revised text of "Uniform Customs" and the draft uniform rules on contract and payment guarantees before their final adoption by the International Chamber of Commerce.

CHAPTER IV

INTERNATIONAL LEGISLATION ON SHIPPING

(a) Introduction

46. The Commission, at its fourth session, decided to examine the rules governing the responsibility of ocean carriers for cargo. 19/ The Commission's resolution concluded that:

"the rules and practices concerning bills of lading, including those rules contained in the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the Brussels Convention 1924) and in the Protocol to amend that Convention (the Brussels Protocol 1968), should be examined with a view to revising and amplifying the rules as appropriate, and that a new international convention may if appropriate be prepared for adoption under the auspices of the United Nations".

47. To carry out this programme of work, the Commission established an enlarged Working Group on International Legislation on Shipping consisting of twenty-one members of the Commission.

48. The Working Group, at its third session, considered the following subjects: I. The period of carrier's responsibility (before and during loading, during and after discharge); II. Responsibility for deck cargoes and live animals; III. Clauses in bills of lading confining jurisdiction over claims to a selected forum; IV. Approaches to basic policy decisions concerning allocation of risks between the cargo owner and the carrier. 20/ In response to the Working Group's

19/ Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17 (A/8417), paras. 10-23 (Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971) (United Nations publication, Sales No.: E.72.V.4), part one, chap. II, paras. 10-23). For the Commission's prior action on the subject, see the report of the Commission on the work of its second session, ibid., Twenty-fourth Session, Supplement No. 18 (A/7618), paras. 114-133 (Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, chap. II, paras. 114-133), and the report of the Commission on the work of its third session, ibid., Twenty-fifth Session, Supplement No. 17 (A/8017), paras. 157-166 (Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970, part two, chap. III, paras. 157-166). See also the report of the Commission on the work of its fifth session, ibid., Twenty-seventh Session, Supplement No. 17 (A/8717), paras. 44-51 (Yearbook of the United Nations Commission on International Trade Law, Volume III: 1972 (United Nations publication, Sales No.: E.73.V.6), part one, chap. II, paras. 44-51.

20/ Report of the Working Group on International Legislation on Shipping on the work of its third session, held in Geneva from 31 January to 11 February 1972 (A/CN.9/63 and Corr.1 and Add.1).

request, the Commission, at its fifth session, decided that the Working Group should hold a fourth (special) session in the last quarter of 1972 and a fifth session in February 1973.

49. The reports of the fourth and fifth sessions of the Working Group were introduced at the present session of the Commission by the rapporteur of the session in question. 21/

(b) Report on the fourth session of the Working Group

50. During the introduction of the report of the Working Group on the fourth session (A/CN.9/74), it was pointed out that the Working Group had prepared draft legislative texts on the basic rules governing the responsibility of the carrier. 22/ These provisions included a unified rule for the carrier's responsibility based on fault, and a unified rule as to burden of proof.

51. It was noted that the draft provisions, in establishing unified rules on responsibility and burden of proof, omitted the "catalogue of exceptions" to the carrier's responsibility contained in the Brussels Convention of 1924. It was further noted that as part of a compromise to secure general agreement, the general rule that the carrier had the burden of proving due care was subject to an exception in the case of fire.

52. It was further noted that the Working Group, at its fourth session, had also prepared draft provisions on arbitration clauses in bills of lading (A/CN.9/74, paras. 38-52). 23/ These draft provisions provided, inter alia, that agreements referring disputes that may arise under a contract of carriage to arbitration shall be allowed; they also indicated the places where, at the option of the plaintiff, the proceedings shall be instituted. 24/

21/ The Commission considered this subject at its 133rd and 134th meetings, on 5 and 6 April 1973.

22/ General principles on the basic rules governing the responsibility of the carrier had been approved by most members at the Working Group's third session (A/CN.9/63, para. 70). The working document for the third session was the first report by the Secretary-General, "Responsibility of Ocean Carriers for Cargo: Bills of Lading" (A/CN.9/63/Add.1). The working document for the current topic at the fourth session was a report by the Secretary-General entitled "Approaches to basic policy decisions concerning allocation of risks between the cargo owner and carrier"; this report was annexed to the report of the fourth session of the Working Group (A/CN.9/74, annex I).

23/ The Working Group, at its third session, had prepared a preliminary draft on clauses in bills of lading specifying where suit shall be brought (A/CN.9/63, para. 39).

24/ A/CN.9/74, para. 47.2. Under these draft provisions (subpara. (5)), these rules do not affect "the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage has arisen".

(c) Report on the fifth session of the Working Group

53. During the introduction of the report of the Working Group on its fifth session (A/CN.9/76), ^{25/} it was pointed out that the Working Group had taken decisions with respect to the rules on limitation of the carrier's liability. It was noted that the Working Group had decided to follow the approach of the Brussels Protocol of 1968 which prescribes alternative upper limits based on (a) the number of packages or units and (b) the weight of goods lost or damaged. However, the Working Group proposed revision of the language of the Protocol, *inter alia*, to remove ambiguities and to take account of problems presented by containerized transport.

54. It was reported that the Working Group had also drafted provisions on the following additional topics: the effect of trans-shipment of the goods on the responsibility of the contracting carrier and of the on-carrier (or "actual" carrier); the effect of measures to save life or property at sea; and the period of limitation within which legal or arbitral proceedings may be brought against the carrier.

(d) Discussion of the reports of the Working Group

55. In considering the reports of the Working Group, it was noted that the drafting of revised rules on the responsibility of ocean carriers had not been completed. The Commission therefore decided that it should adhere to the approach that had been generally followed when a working group was in the course of preparing a legislative text, and confine action to noting the progress made by the Working Group. Consequently, decision on the action by the Working Group was deferred until the proposed legislative provisions could be reviewed as a whole.

56. Many representatives expressed their satisfaction with the progress being made by the Working Group; appreciation was also expressed for the spirit of compromise which had made it possible for the Working Group to reach agreement on a large number of difficult issues.

57. Some representatives expressed their support for the approach, to which the Working Group had given preliminary consideration, that the revised provisions should be embodied in a new convention rather than in a second Protocol to the 1924 Brussels Convention. It was suggested that preparing a new convention would make possible a unified text that would be easier to construe. In addition, a new convention should embody modern terminology and approaches that had been developed in the conventions applicable to transport by air, by rail and by road, and that harmony among the provisions governing responsibility for carriage by the various means of transport was becoming increasingly important with the rapid development of combined transport.

58. Some representatives regretted the compromise provision adopted by the Working Group at its fourth session (para. 51 above) whereby the carrier did not have the burden of proving his due care in the case of loss or damage to the goods because

^{25/} The working document for this session was the second report of the Secretary-General, "Responsibility of Ocean Carriers for Cargo: Bills of Lading" (A/CN.9/76/Add.1).

of fire. Nevertheless, one representative pointed out that the suggestion with respect to harmonizing the rules applicable to the different modes of transport should take account of the special circumstances and risks inherent in transport by sea.

59. One representative supported the suggestion, made in connexion with the future programme of the Working Group, that the rules of the convention should be applicable to contracts of carriage which might not be embodied in a "bill of lading" under a narrow definition of that term. Another representative supported the emphasis which the Working Group had given to the unified obligation of the carrier on his contractual undertaking. The representative also welcomed the removal of the limitation of liability where damage was caused by wilful misconduct of the carrier or of any of his servants or agents, but would have wished the same rule to apply in the case of damage resulting from reckless acts or inexcusable fault.

60. One representative drew attention to the rules on arbitration clauses prepared by the Working Group at its fourth session (para. 52 above). The representative stated that the provision as to the method of selecting the place for arbitration was unacceptable to his delegation, and required further consideration.

Decision of the Commission

61. The Commission at its 134th meeting, on 6 April 1973, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Takes note with appreciation of the reports of the Working Group on International Legislation on Shipping on the work of its fourth and fifth sessions;

2. Requests the Working Group to continue its work under the terms of reference set forth by the Commission in the resolution adopted at its fourth session and to complete that work expeditiously.

CHAPTER V

INTERNATIONAL COMMERCIAL ARBITRATION

62. The Commission, at its second session, appointed Mr. Ion Nestor (Romania) as Special Rapporteur on problems concerning the application and interpretation of the existing conventions on international commercial arbitration and other related problems. 26/

63. At the Commission's third session, the Special Rapporteur submitted a preliminary report (A/CN.9/49 and Add.1); at the fifth session, the Special Rapporteur presented his final report (A/CN.9/64).

64. After consideration of the final report of the Special Rapporteur, the Commission, at its fifth session, requested the Secretary-General to invite States members of the Commission to submit to the Secretariat their comments on the proposals made by the Special Rapporteur and any other suggestions and observations they might wish to make in respect of the subject. 27/

65. At the present session, the Commission had before it a report of the Secretary-General summarizing the comments, suggestions and observations of States members of the Commission, and setting forth proposals regarding further work on the subject (A/CN.9/79).

66. Most representatives who spoke on the subject focused their comments and suggestions on the proposals of the Special Rapporteur relating to (a) the promotion of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, (b) the promotion of the 1961 European Convention on International Commercial Arbitration, (c) the setting up of a study group or working group to examine the desirability of drawing up a model set of arbitration rules and the feasibility of unification and simplification of national rules on arbitration, and (d) the publication of arbitral awards.

26/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618), para. 112 (Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, chap. II, para. 112).

27/ Ibid., Twenty-seventh Session, Supplement No. 17 (A/8717), para. 87 (1) (Yearbook of the United Nations Commission on International Trade Law, Volume III: 1972 (United Nations publication, Sales No.: E.73.V.6), part one, chap. II, para. 87 (1)).

67. As to the promotion of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, all representatives agreed that countries which had not yet ratified or acceded to that Convention should be urged to do so. It was also agreed that the Commission should ask the General Assembly to make such a recommendation.

68. Several representatives expressed doubts as to whether the Commission should take any action in respect of the 1961 European Convention on International Commercial Arbitration. It was held by some representatives that before any positive recommendation could be made concerning ratification of, or accession to, that Convention, the text would have to be studied by the Commission itself in order to decide whether it was suitable for commendation. Other representatives agreed with the proposal made by the Special Rapporteur that the Commission should recommend ratification of, and accession to, the above Convention. Most representatives, however, who supported that proposal were of the opinion that the Commission, instead of making such a recommendation itself, should invite the Economic Commission for Europe to do so. One representative suggested that before taking any final decision, the Commission should request the Economic Commission for Europe to ascertain whether the Convention was being widely used and whether it had been found unsatisfactory in any respect.

69. The proposal was also made that the 1961 European Convention on International Commercial Arbitration should be promoted in regions other than Europe. Several representatives commented on this proposal. Some representatives suggested that the Commission should transmit the Convention to the regional economic commissions other than that for Europe and should invite them to study the Convention in order to ascertain whether it could be adapted to the needs of international trade in their parts of the world. Other representatives were of the opinion that the economic commissions should be encouraged to take into consideration the provisions of the 1961 European Convention in elaborating a convention that would satisfy their needs. Several representatives expressed the view that the Commission should not contact directly the interested economic commission but that it should instead invite the Economic Commission for Europe to request the other regional commissions to indicate the changes, if any, which in their opinion seemed to be necessary in order to make the Convention acceptable to countries in their regions. Some representatives, however, suggested that the Commission, without seeking the opinion of economic commissions, should recommend that States outside Europe ratify the Convention. One representative pointed out that such recommendation would have to be addressed to the economic commissions, to the Council for Mutual Economic Assistance and to States which were not members of any regional economic commission.

70. Some representatives objected to the above proposals and suggested that the Commission should take no action in respect of the 1961 Convention before it had the opportunity to form an opinion on the provisions thereof. Moreover, those representatives were of the view that the promotion of the 1961 Convention, which was regional, was not within the terms of reference of the Commission.

71. With respect to the proposal referred to under (c) in paragraph 66 above, most representatives who spoke on the issue agreed that it was premature to set up a study group or working group at this time. It was suggested that any preparatory work that the Commission might wish to be made could be best carried out by the Secretariat. Representatives, however, expressed opposing views as to whether the Commission should include in its programme of work the implementation of the proposal

of the Special Rapporteur that a model set of arbitration rules be drawn up and the national rules on arbitration be unified. Some representatives were of the opinion that the implementation of this proposal was virtually impossible and, therefore, did not justify an expenditure of the limited financial and other resources of the United Nations. One of these representatives pointed out that procedural law was much more difficult to unify than substantive law. In most countries, the code of civil procedure was one of the branches in which national traditions were strongest. The unification of these codes or any rules thereof was made especially difficult by the fact that the procedure in the common law countries was totally different from that in force in the civil law countries. For these reasons, unification of procedural law could not be carried out on a universal but only on a regional basis.

72. In respect of the proposed model arbitration rules, a representative noted that, in the course of the preparation of the 1966 European Arbitration Rules, the Economic Commission for Europe had assembled some 100 sets of such rules each of which had claimed to be a model; there was no purpose in adding one more set to these rules. Another representative expressed the opinion that one set of arbitration rules would not be enough to cover all needs because a set of arbitration rules that would be suitable to less important transactions could not be applied to disputes involving considerable amounts of money.

73. The representatives referred to in the above paragraphs concluded that the Commission should request the Secretary-General to prepare a study on the desirability and feasibility of drawing up a set of model arbitration rules and of the unification of national laws.

74. Several representatives expressed their disagreement with this, in their view, negative attitude. The opinion was expressed that the Commission could do effective work on the unification of arbitration rules and on the unification of national laws on arbitration.

75. One observer pointed out that, at a meeting organized some years ago to discuss the relationship between unification on a regional and on a universal level, it had been concluded that universal unification was the desired goal and only if such unification was not obtainable should an effort be made at regional unification. This opinion was supported by one representative.

76. Another observer noted that the member States of the Council for Mutual Economic Assistance had signed in 1972 a Convention on the settlement by arbitration of disputes resulting from economic, scientific and technical co-operation, and had decided to prepare a set of uniform rules for the arbitration courts in their States.

77. The majority of representatives agreed with the proposal that the Commission should decide to prepare a set of arbitration rules for use in ad hoc arbitration. One representative pointed out that such rules were needed by businessmen and would help to overcome problems arising from trade between countries with different legal systems. Another representative suggested that, in drawing up such rules, account should be taken of the difficulties which small businessmen of developing countries encountered in settling their disputes by arbitration.

78. Most of the representatives who supported the preparation of a set of arbitration rules suggested that this task should be carried out by the Secretariat,

in co-operation with the Special Rapporteur and interested international organizations. It was also suggested that the Secretariat, in the performance of this task, should base its work on existing arbitration rules drawn up by regional economic commissions and other organizations and should take into consideration international practices. One representative suggested that the Secretariat should seek the co-operation, inter alia, of the Inter-American Commission for Commercial Arbitration and that in its work it should also take into consideration the 1972 Convention on settlement of disputes by arbitration, concluded by member States of the Council for Mutual Economic Assistance.

79. Several representatives objected to the Special Rapporteur's proposal that the Commission should publish a compilation of arbitral awards relating to international trade, provided that the parties concerned agreed to such publication. It was pointed out that the reason for submission of a dispute to arbitration was often the desire to avoid publicity. It was also noted that the proposed compilation would not be of substantial value since such work was bound to be very incomplete and would contain only a few scattered rulings on the rules of conflict and the substantive national laws of different countries. In addition, such publication would largely duplicate existing compilations and would only contain awards which had already been published in legal periodicals.

80. Other representatives, on the other hand, expressed the view that a compilation of arbitral awards would contribute to the use of arbitration and would promote the exchange of information. One observer suggested that the best course would be to publish a general review of trends without mentioning the names of the parties or specific details of the award. Such publication could be incorporated in the Commission's Yearbook.

81. Some representatives also commented on the Special Rapporteur's proposal that the Commission should encourage and sponsor the establishment of an International Organization of Commercial Arbitration. However, these representatives were of the opinion that the establishment of arbitration centres was a matter for arbitration organizations and not for Governments. One representative noted that the International Congresses on Arbitration had shown that there was no need for a permanent organization. These periodic Congresses were accessible to all, and attended by most interested organizations, while a costly permanent organization would probably have only limited membership.

82. One representative suggested that the Commission should place more emphasis on technical assistance and training in developing countries by sending experts to acquaint such countries with arbitration procedure.

83. The Commission established a drafting party composed of the representatives of Australia, Austria, France, Nigeria, Romania, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, and requested it, in view of the comments and proposals made at the session, to prepare a draft resolution on the questions set forth under (a), (b) and (c) in paragraph 66 above.

84. One representative suggested that the Commission should also take a decision on the work that it might wish to carry out in respect of other proposals of the Special Rapporteur.

Decision of the Commission

85. The Commission at its 140th meeting, on 11 April, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Recommends that the General Assembly should invite the States which have not ratified or acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 to consider the possibility of adhering thereto;

2. Invites the Economic Commission for Europe to draw the attention of the States which are eligible to ratify or accede to the 1961 European Convention on International Commercial Arbitration but have not done so, to the existence of that Convention and to invite them to indicate whether they intend to adhere thereto;

3. Requests the Secretary-General:

(a) In consultation with regional economic commissions of the United Nations and centres of international commercial arbitration, giving due consideration to the Arbitration Rules of the United Nations Economic Commission for Europe and the ECAFE Rules for International Commercial Arbitration, to prepare a draft set of arbitration rules for optional use in ad hoc arbitration relating to international trade;

(b) To submit the draft to the Commission at its eighth session or a report, should his studies and the consultations with the above-mentioned organizations indicate that the drawing up of such rules is not desirable;

4. Reserves the right to consider at a later session what further work it might usefully undertake in the field of international commercial arbitration.

86. Some representatives expressed reservations regarding paragraph 2 of the above decision since the Commission thereby encouraged the promotion of unification of regional trade law as opposed to international trade law. Several representatives stated that the adoption of paragraph 2 of the decision should not constitute a precedent.

CHAPTER VI

TRAINING AND ASSISTANCE IN THE FIELD OF INTERNATIONAL TRADE LAW

87. The Commission, at its fifth session, requested the Secretary-General to accelerate and intensify the activities relating to the implementation of the Commission's programme on training and assistance in the field of international trade law. The Secretary-General was also requested to explore the feasibility of organizing an international symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law. 28/

88. At the present session, the Commission had before it a report of the Secretary-General (A/CN.9/80), setting forth the activities that had been undertaken to implement the Commission's programme on training and assistance and the outcome of the inquiry that was undertaken pursuant to the Commission's decision concerning the feasibility of organizing the above-mentioned symposium. 29/

89. In the course of introducing this report, the Secretary of the Commission drew attention to the fact that the practice of allocating some of the fellowships of the United Nations Institute for Training and Research (UNITAR) to candidates who had special interest in international trade law, would be continued in 1973. These fellows from developing countries would receive training in international trade law under supervision of members of the International Trade Law Branch.

90. The Secretary of the Commission also explained the financial difficulties that had been encountered in securing sufficient voluntary contributions that would enable a young scholar from a developing country to travel to a centre with adequate library facilities where he could develop teaching materials for use in his own university and possibly in universities in his region.

91. The Commission was also informed of a request by the Secretary-General to developed countries, Members of the United Nations, inviting banking and trade institutions within their respective countries to provide internships for nationals from developing countries. It was reported that positive replies to this request had been received from the Governments of Austria, Belgium, Norway and the United Kingdom of Great Britain and Northern Ireland.

92. With respect to the proposed international symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law, the Secretary of the Commission suggested that the symposium could best be organized in connexion with the eighth session of

28/ Ibid., para. 97 (Yearbook of the United Nations Commission on International Trade Law, Volume III: 1972 (United Nations publication, Sales No.: E.73.V.6), part one, chap. II, para. 97).

29/ The Commission considered this report in the course of its 132nd and 133rd meetings, on 5 April 1973.

the Commission, to be held in 1975 at the United Nations Office in Geneva. The Commission was informed that if the symposium was held towards the end of the session, the free time that was usually devoted to preparation of the report of the session could be utilized for the symposium. In addition, the Commission could use, for the discussion of the theme of the symposium, the two meetings that were usually allocated for the discussion of the subject of training and assistance. The Commission was also informed that UNITAR had expressed its willingness to co-operate with the Secretariat in the administrative organization of the symposium.

93. With respect to the production of teaching materials in the field of international trade law, several representatives stressed the importance of the project and expressed gratitude to the Government of Australia whose representative had announced that his Government was prepared to offer a fellowship of \$A 5,000 to enable a young scholar from a developing country to undertake the compilation of the material in Australia.

94. Several representatives expressed the hope that an increasing number of universities would include the subject of international trade law in their curricula.

95. The representative of France announced that although no communication from his Government had been received by the Secretariat, his Government had none the less agreed to offer some fellowships to nationals from developing countries with a view to enabling them to gain practical experience in international trade law at financial and trade institutions in France. The representative of Australia indicated that his Government would be prepared to assist nationals from developing countries to find internships or fellowships with commercial and financial institutions in Australia.

96. Many representatives expressed appreciation to the Governments which had responded favourably to the Secretary-General's appeal for internships for which there was a pressing need in developing countries. One representative said that the lack of positive response to the Secretary-General's appeal from other developed countries was somewhat disappointing. Some representatives supported the suggestion set forth in the Secretary-General's report that he should inform developing countries of the offers of assistance for training and internships in international trade law made by developing countries.

97. Some representatives were of the opinion that what lawyers and government officials from developing countries needed most at this stage was not a programme of narrow specialization in the various fields of international trade law, but a programme of instruction of a rather general and basic character. These representatives were, therefore, particularly appreciative of the efforts made by certain Governments to provide this kind of training in their academic institutions for nationals of developing countries.

98. Several representatives agreed with the view that it would be highly beneficial to arrange seminars on international trade law in the developing countries themselves. Such seminars, conducted with the help of visiting professors from developed countries, would make it possible to reach a considerable number of lawyers, businessmen and government officials from developing countries with minimum cost. In this connexion, the suggestion was made that UNITAR should be encouraged to continue to organize such seminars.

99. The observer from the Inter-Governmental Maritime Consultative Organization (IMCO) informed the Commission that the organization had developed concrete plans for a programme of assistance to developing countries in the field of laws and regulations applicable to ships and shipping, to be jointly sponsored by IMCO, UNCTAD and UNCITRAL. The details of the programme would be communicated to UNCITRAL's secretariat in the near future.

100. All representatives who spoke on the subject were of the opinion that the organization of an international symposium of teachers and prospective teachers of international trade law on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law would be of great value. In addition to disseminating the work of the Commission, the symposium would help in promoting the introduction of the subject of international trade law in the curricula of national universities.

101. All representatives also agreed that the symposium should be held in connexion with the eighth session of the Commission, as suggested by the Secretary of the Commission. Some representatives, however, were of the opinion that two days were too short a period for a meaningful exchange of views on the theme of the symposium. In the view of these representatives, a minimum of four or five days was required.

102. Other representatives were of the opinion that, in view of the need to avoid incurring additional expenditure by the United Nations, a two-day discussion would be adequate, provided that the participants were given the opportunity to observe the Commission in action during the last week of the session and that members of the Commission volunteered to address the participants on the work of the Commission between meetings.

103. One representative suggested that it might be possible to extend the symposium by additional meetings at one of the national universities in his country, provided that the timing of the symposium coincided with the Easter vacation when students' lodgings could be used by the participants.

104. Many representatives expressed the view that participants from developing countries would have to be paid travel expenses and subsistence allowances so that they could attend the symposium in sufficient numbers. In the opinion of these representatives, the value of the symposium would be vastly diminished if attendance at the symposium was practically restricted to participants from developed countries. The secretariat of the Commission was therefore requested to seek voluntary contributions from Governments, international organizations and foundations to cover the cost of travel and subsistence of participants from developing countries. In this connexion, the representative of Australia said that he would take up with his Government the possibility of its making a contribution towards the travel of participants from these countries and appealed to other representatives of developed countries to do likewise. The observer from the Commission of European Communities suggested that his Commission, within the framework of the special agreement with associated countries, might be in a position to make a contribution for the travel and subsistence of participants from African countries.

105. One representative suggested that the title of the symposium should include a reference to "international payments" so that the uniform law that the Commission was elaborating in this field could be brought to the notice of academic and

business circles. In the opinion of this representative, such a reference would attract participants from banking and financial institutions and would prompt them to make voluntary contributions to meet the costs of attendance of professors from developing countries.

106. Several representatives suggested that, in order to ensure the success of the symposium, its subject-matter should be limited in advance to two or three informative topics. The secretariat of the Commission was therefore requested to consult with individual members of the Commission on the organization and planning of the symposium.

Decision of the Commission

107. The Commission at its 133rd meeting, on 5 April 1973, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Expresses its appreciation to those Governments which have made voluntary contributions for the implementation of its programme of training and assistance in the field of international trade law.

2. Expresses the hope that further contributions will be made in any appropriate form;

3. Expresses the view that universities should be encouraged to promote the study of international trade law and hopes that the symposium, referred to in paragraph 4 (c) below, will help in this regard;

4. Requests the Secretary-General:

(a) To accelerate and intensify the activities relating to the above programme of training and assistance, with special regard to the needs of developing countries;

(b) To organize, in connexion with its eighth session, an international symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law, and to seek voluntary contributions from Governments, international organizations and foundations to cover the cost of travel and subsistence of participants from developing countries;

(c) To explore the possibility of the United Nations Institute for Training and Research arranging seminars in developing countries on international trade law.

CHAPTER VII

MULTINATIONAL ENTERPRISES

108. At its twenty-seventh session, the General Assembly adopted resolution 2928 (XXVII) of 28 November 1972, on the report of the United Nations Commission on International Trade Law. In paragraph 5 of the resolution, the General Assembly invited the Commission:

'to seek from Governments and interested international organizations information relating to legal problems presented by the different kinds of multinational enterprises, and the implications thereof for the unification and harmonization of international trade law, and to consider, in the light of this information and the results of available studies, including those by the International Labour Organisation, the United Nations Conference on Trade and Development and the Economic and Social Council, what further steps would be appropriate in this regard.'

109. At the present session, 30/ the Commission had before it a note by the Secretary-General (A/CN.9/83) setting forth background information pertaining to paragraph 5 of the General Assembly resolution and suggesting possible action by the Commission in response thereto.

110. Some representatives noted that the term "multinational enterprises" was not a legal term; the law, at its present stage of development, recognized only enterprises incorporated under national law and the Commission ought therefore to define the term. Other problems as to the scope of the mandate conferred on the Commission arose. For instance, the General Assembly resolution referred to "different kinds of enterprises" and it could be asked whether this expression comprised not only manufacturing enterprises but also financial, servicing or distributing enterprises or enterprises that were engaged in transport. Doubts also arose about the meaning of "multinational"; that term could refer to a single enterprise with many branches in different countries or to an enterprise whose shareholders were nationals of different countries. Under one view, the term "multinational enterprise" could be replaced by the term "transnational enterprise". Further, it was not clear whether the resolution envisaged only private enterprises or also State and other public enterprises. These representatives were of the opinion that the immediate problem facing the Commission was to define the scope of its mandate and that therefore a study of that question would be necessary before issuing a questionnaire to Governments and interested international organizations.

111. Other representatives were of the view that the mandate given by the General Assembly left no doubt as to what was requested from the Commission, even if the terminology used did not always fit into existing legal concepts. Some

30/ The subject was considered by the Commission at its 134th and 135th meetings, on 6 April 1973.

representatives stated that a number of countries were disturbed about the negative aspects inherent in the operations of multinational enterprises which, they said, posed a threat to national sovereignty and led to the dispersion of economic resources. Several representatives took the view that the Commission was not, at this stage, asked to formulate rules but to seek "information relating to legal problems presented by the different kinds of multinational enterprises". A questionnaire to Governments was one of the means to obtain such information. These representatives suggested that the secretariat should be asked to prepare a questionnaire, to equip itself with knowledge on the subject, and to report at each session of the Commission on the state of the work.

112. In the view of some representatives, members of the Commission should assist the secretariat in formulating the questionnaire. The questionnaire should relate to the concept of a multinational enterprise and to the legal problems that resulted from the activities of such enterprises. The Commission, after examining a report by the Secretariat based on a thorough compilation and analysis of replies to the questionnaire and perusal of pertinent studies, would then be in a position to consider what further steps, if any, it could appropriately take.

113. The observer for the Commission of European Communities stated that the European Economic Community had a special interest in the question at issue and that his organization was prepared to reply to the questionnaire and otherwise to assist the secretariat. He suggested that the definition of a multinational enterprise should be conceived in both legal and economic terms. The hallmark of such enterprises was that the decision-making body had its centre in one country and that its subsidiaries, which were dependent on it in law or in fact, were dispersed in a number of countries; in addition, each subsidiary (manufacturing, financial, distributing or otherwise) was a unit whose importance or influence was considerable in the country where it was located.

114. The observer for the International Chamber of Commerce (ICC) referred to an ICC report prepared for the ICC Congress in Istanbul in 1969. He expressed the hope that any framework, guidelines or rules that might be proposed should be such as to protect legitimate business interests.

115. The Commission, after deliberation, appointed a drafting party composed of the representatives of Australia, Austria, Chile and Nigeria and requested it to prepare a draft decision for consideration by the Commission.

Decision of the Commission

116. The Commission, at its 140th meeting, on 11 April 1973, adopted unanimously the following decision:

The United Nations Commission on International Trade Law,

Having regard to General Assembly resolution 2928 (XXVII) of 28 November 1972,

Requests the Secretary-General:

1. To draw up a questionnaire designed to obtain information concerning legal problems presented by multinational enterprises, and

the implications thereof for the unification and harmonization of international trade law, and seeking suggestions as to the areas in respect of which measures might appropriately be taken by the Commission, and to address that questionnaire to Governments and interested international organizations, taking into account the views expressed by representatives during the discussion of the item;

2. To prepare a report for the Commission's consideration, setting forth:

• (a) An analysis of replies to the questionnaire;

(b) A survey of available studies, including those by United Nations organs and agencies, in so far as those studies disclose problems arising in international trade because of the operations of multinational enterprises, which are susceptible of solution by means of uniform legal rules;

(c) Suggestions as to the Commission's future course of action, in terms of programme of work and working methods in this particular area;

3. To place his report before the Commission at a future session, with the timing of submission dependent on the time at which the replies to the questionnaire reach the Secretariat and the studies mentioned above are available, and to submit a progress report at the seventh session.

CHAPTER VIII

ESTABLISHMENT OF A UNION OF "JUS COMMUNE" IN MATTERS OF INTERNATIONAL TRADE

117. At the Commission's second session, the representative of France submitted a proposal which was designed to promote ratification of conventions concerning international trade law. According to this proposal, States would, pursuant to a general convention, agree to accept the rules established by the Commission or under its auspices, as a body of common law governing international trade. These rules would be binding upon States unless they expressly declined to accept them. 31/

118. The Commission, at that session, gave preliminary consideration to the proposal and requested the representative of France to submit a working paper on the subject. 32/ Pursuant to this request, the representative of France submitted to the Commission at its third session a working paper setting out his proposal in greater detail (UNCITRAL/III/CRP/3). The Commission gave further consideration to the proposal and decided to defer final action thereon until its fourth session. 33/

119. The Commission, at its fourth session, considered a document submitted by the representative of France which set forth a preliminary draft of a convention establishing a union for jus commune in matters of trade; the document also contained a statement of the reasons supporting the proposal (A/CN.9/60). Following a general debate on the subject, the Commission requested the Secretary-General to communicate the document to members of the Commission and to invite them to make comments and observations, and decided to include the subject in the agenda of its sixth session. 34/

120. At the present session, the Commission had before it a report of the Secretary-General (A/CN.9/81) containing an analysis of comments and observations by Governments on the proposal of the French delegation and annexing thereto the

31/ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618), paras. 168-172 (Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, chap. II, paras. 168-172).

32/ Ibid., para. 176.

33/ Ibid., Twenty-fifth Session, Supplement No. 17 (A/8017), para. 217 (Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, chap. III, para. 217).

34/ Ibid., Twenty-sixth Session, Supplement No. 17 (A/8417), para. 155 (Yearbook of the United Nations Commission on International Trade Law, volume II: 1971 (United Nations publication, Sales No. E.71.V.1), part one, chap. II, para. 155).

text of those comments and observations. The Commission also had before it the document that was submitted by the representative of France at the Commission's fourth session which set forth the text of the draft convention for the establishment of a union for jus commune in matters of international trade (A/CN.9/60). 35/

121. In introducing his proposal, the representative of France explained that the practical purpose of the proposal was to seek certainty and security for international trade transactions by clearly identifying the applicable law and the particular rules of that law. Progress in achieving this goal was hampered by the failure of States to ratify or to accede to international conventions which attempted to achieve some measure of unification and harmonization of international trade law. In the view of the French representative, it was not enough for the international community to continue to elaborate conventions concerning international trade law; it must also seek to establish a régime which would bring these conventions into force. Such a task was clearly within the mandate of UNCITRAL.

122. The representative of France also mentioned that the proposal for the establishment of a union for jus commune had for its immediate object the persuasion of as many States as possible to accept the idea that international commercial transactions should be governed by a single body of uniform law. The role of the proposed international union with respect to such uniform law involved no infringement of national sovereignty. Article X of the preliminary draft convention establishing a union for jus commune fully respected the sovereignty of States inasmuch as they would be able, under that article, to declare at any time that a particular rule of the jus commune would not apply in their territories.

123. The representative of France, however, mentioned that his delegation, after consulting members of the Council of Europe, had decided that perhaps the time was not ripe for establishing a union for jus commune as he had previously suggested and that the proposal should perhaps be regarded as an aim for the future. In the meantime, a less ambitious system for accelerating the process of ratification of conventions should be found.

124. The representative of France suggested that a régime along the lines of the system followed by the International Labour Organisation might be an acceptable solution. Under that system, States members of the organization were bound to consider ratification of labour conventions within a prescribed period. Periodic reports were obtained on the progress made on ratification by individual States. Another possible solution might be a system under which one signatory State would be requested to keep under review the status of a particular convention and the progress made on its ratification. In view of the various possible solutions to the problem of lack of speedy ratification of conventions, the representative of France proposed that the Commission set up a working group to study the causes for the failure by States to bring into force conventions concerning international trade law and to make recommendations with respect to steps that might be taken to accelerate the process of adherence to such conventions.

125. Many representatives congratulated the representative of France on the initiative he had taken in this important field and shared his view that the present

35/ The Commission considered this item in the course of its 136th and 137th meetings, on 9 April 1973, and 140th and 141st meetings, on 11 April 1973.

situation was far from satisfactory. It was generally agreed that it was within the competence of the Commission to consider ways and means of accelerating the process of bringing to force conventions concerning international trade law.

126. Most representatives, however, were of the opinion that although the proposal to establish a union for jus commune was undoubtedly attractive, it would, at the present time, give rise to practical constitutional and administrative difficulties in many States. These representatives were, therefore, gratified to note that the representative of France was prepared to modify his proposal.

127. Several representatives were also of the opinion that it would be premature to establish a working group on the subject as suggested by the representative of France. In the view of these representatives it would be more profitable to request the secretariat of the Commission to submit to a future session of the Commission a report on the question which would identify the causes for the delay in adhering to conventions on international trade law and recommend measures for the elimination of those causes. It was also suggested that the question should be included periodically in the Commission's agenda (e.g., every three years) for critical examination by the Commission.

128. Several representatives supported the proposal to set up a small working party to prepare the suggested report.

129. Some representatives expressed the view that both the establishment of a working party and the preparation of a report by the secretariat would be premature. In the opinion of these representatives there was no need to inquire into the reasons why existing conventions were not adhered to by a sufficiently large number of States since the Commission itself was working on the elimination of those reasons by undertaking the revision of the rules embodied in those conventions. On the other hand, if the study by the working party or the secretariat was to be directed to future conventions elaborated by the Commission, such a study would prejudice the fate of these conventions, none of which had so far been finally concluded. Some of these representatives further emphasized that it would be improper to embark on a general programme of promoting adherence to existing international conventions since many States had not had the opportunity to participate in the formulation of most of these conventions.

130. One representative suggested that in view of the heavy work-load of the secretariat of the Commission, the Commission should designate one of the representatives of its members as special rapporteur to prepare the required study. Another representative was of the opinion that the question of promotion of adherence to international conventions belonged to the domain of public international law. Consequently, the International Law Commission, which dealt with this field, should first be consulted to ensure that the establishment of a working group on the subject did not encroach upon the competence of that body.

131. One representative further suggested that it was not enough to achieve uniform rules on matters relating to international trade law; arrangements should also be made to ensure the consistent interpretation of those rules. To this end, the same representative suggested that a provision for a permanent world trade court should be included in the preliminary draft convention on the establishment of a union for jus commune.

Decision of the Commission

132. The Commission at its 141st meeting, on 11 April 1973, after considering various proposals, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Decides to maintain on its agenda the question of the widest ratification of or adherence to conventions concerning international trade law;
2. Requests the Secretary-General to prepare, if appropriate with the assistance of representatives of members of the Commission, a report examining the causes of delay in ratification of or adherence to such international conventions and the means of accelerating such ratification or adherence, based on the studies made and the experience gained by other United Nations organs or specialized agencies, in particular the United Nations Institute for Training and Research, the International Labour Organisation, the World Health Organization, International Civil Aviation Organization and the Inter-Governmental Maritime Consultative Organization, and to submit such report to the Commission, if practicable, at its seventh session;
3. Decides to re-examine at its seventh session if time allows, and in the light of the Secretary-General's report, the desirability of establishing a small working party, to be entrusted with the formulation of proposals, for consideration by the Commission at a later session, regarding ways and means that would accelerate the ratification of or adherence to conventions concerning international trade law.

CHAPTER IX

FUTURE WORK; WORKING METHODS

A. General Assembly resolution 2928 (XXVII) on the report of the Commission on the work of its fifth session

133. The Chairman of the fifth session of the Commission, who had introduced the report of the Commission on the work of its fifth session to the Sixth Committee of the General Assembly at the Assembly's twenty-seventh session, reported on the action taken by the General Assembly on the Commission's report.

B. General Assembly resolution 2929 (XXVII) on the United Nations Conference on Prescription (Limitation) in the International Sale of Goods

134. The Commission took note of this resolution, by which the General Assembly decided that an international conference of plenipotentiaries shall be convened in 1974 and referred to the conference the draft Convention on Prescription (Limitation) in the International Sale of Goods, together with the commentary thereon and the analytical compilation of comments and proposals to be prepared by the Secretary-General pursuant to the decision of the Commission. 36/

C. Message from the Secretary-General of the United Nations to United Nations Councils, Commissions and Committees

135. At the 126th meeting of the Commission, on 2 April 1973, the Secretary of the Commission read out a message from the Secretary-General. In that message, the Secretary-General expressed the view that, owing to the continuing financial difficulties of the Organization, some measure of budgetary restraint was unavoidable. For this reason, it was essential to enlist the full support of the Secretariat and of the various United Nations bodies where new programmes and activities are originated. Although the Secretary-General did not suggest that new programmes and activities could not be undertaken, he invited such bodies to accommodate new programmes within the staff resources that had become available as a result of the completion of prior tasks, or by the assignment of a lower order of priority to certain continuing activities.

136. The Commission took note of the message of the Secretary-General and took his observations into account in planning its programme of work.

36/ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717), para. 20 (Yearbook of the United Nations Commission on International Trade Law, Volume III: 1972 (United Nations publication, Sales No.: E.73.V.6), part one, chap. II, para. 20).

D. Date and place of sessions of the Commission and its Working Groups; United Nations Conference on Prescription (Limitation) in the International Sale of Goods

137. After hearing a statement on financial implications, the Commission decided to hold its seventh session at United Nations Headquarters in New York from 10-14 June 1974.

138. The sessions of the Working Groups of the Commission were scheduled to take place as follows:

- (a) Second session of the Working Group on Negotiable Instruments, at New York from 7-18 January 1974.
- (b) Fifth session of the Working Group on the International Sale of Goods, at Geneva from 21 January-1 February 1974.
- (c) Sixth session of the Working Group on International Legislation on Shipping, at Geneva from 4-22 February 1974.

The Secretary of the Commission stated that current plans with respect to the United Nations Conference on Prescription (Limitation) in the International Sale of Goods indicated that the Conference could be held in New York from 17 June-12 July 1974. It was noted that this schedule reflected both the availability of conference services and the Commission's plan to hold its seventh session during the week immediately preceding the United Nations Conference on Prescription. The Commission gave general approval to these plans.

E. Expiration of terms of office of members of the Commission; membership of Working Groups

139. The Secretary informed the Commission that the term of 15 of its members would end on 31 December 1973 and that the election to be held by the General Assembly at its twenty-eighth session might affect the present membership of working groups. In order to ensure the proper functioning of the working groups, he proposed that, after the election of the 15 members by the General Assembly, representatives of the member States of the Commission should meet to decide, if necessary, on the replacement of outgoing members of the Commission in any working group that would meet prior to the seventh session of the Commission. The Commission expressed its agreement with this proposal.

F. Methods of work

140. At the fifth session of the Commission, the representative of Spain introduced a proposal of his delegation regarding the working methods of the Commission (A/CN.9/L.22). At that session, the Commission had decided to consider this question further at its present session.

141. In commenting on the proposal of his delegation, the representative of Spain expressed satisfaction at the fact that the Commission, in planning its work, had adopted certain of the suggestions made therein, such as the establishment of small working groups, the holding of longer sessions of these groups and of shorter sessions of the Commission, and the use of experts.

142. Representatives who spoke on the subject expressed their appreciation for the proposals made by the Spanish delegation with a view to improving the working methods of the Commission. One representative, however, advocated caution with regard to reliance on the work of experts. The primary aim of the Commission's work should not be the technical perfection of legal texts, but the elaboration of uniform rules which were acceptable to the international community as a whole.

143. The Commission at its 142nd meeting, on 13 April 1973, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Expresses its appreciation for the contribution to its working methods provided by the suggestions submitted by the delegation of Spain to the Commission at its fifth session;
2. Expects to bear these suggestions in mind in planning its work.

CHAPTER X

OTHER BUSINESS

Uniform rules relating to the validity of contracts of international sale of goods

144. By a letter dated 10 March 1973, the President of the International Institute for the Unification of Private Law (UNIDROIT) transmitted to the Secretary-General of the United Nations the text of a "draft of a law for the unification of certain rules relating to the validity of contracts of international sale of goods" prepared by a working group appointed by UNIDROIT, and an accompanying explanatory report. 37/

145. The observer for UNIDROIT stated that the purpose of the draft uniform law was to fill a gap left by the uniform law on the international sale of goods, adopted at the Hague Conference in 1964, which omitted from its scope "the validity of the contract or of any of its provisions" (article 8 of the uniform law). The Commission might deem it desirable that the uniform law on the international sale of goods, at present being revised by the Working Group on Sales, be supplemented by rules on the validity of contracts of international sale, and might wish, at some stage, to refer the draft to its Working Group for consideration.

146. Representatives who spoke on the subject expressed their appreciation for the work accomplished by UNIDROIT and for the decision taken by UNIDROIT's Governing Council to submit the draft for further consideration by the Commission.

147. Some representatives were of the opinion that the Commission should refer the draft uniform law to its working group on sales for an opinion as to whether this should be included in the Commission's work programme. Other representatives opposed this on the ground that they had not yet had the occasion to study the draft. According to the representatives, the Commission ought first to examine whether the draft uniform law fell within the scope of international sale of goods and, if so, what priority it should be given within the Commission's programme of work.

148. The Commission, at its 142nd meeting on 13 April 1973, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Takes note of the letter, dated 10 March 1973, from the President of the International Institute for the Unification of Private Law, transmitting to the Commission the text of a "draft of a law for the unification of certain rules relating to the validity of contracts of international sale of goods" and inviting the Commission to include the consideration of this draft as an item on its agenda;

2. Requests the Secretary-General to communicate the draft to the members of the Commission;

3. Decides to consider at its seventh session what further steps should be taken on the subject.

ANNEX

LIST OF DOCUMENTS BEFORE THE COMMISSION

A. General series

- A/CN.9/74 International legislation on shipping: report of the Working Group on the work of its fourth (special) session held in Geneva from 25 September to 6 October 1972
- A/CN.9/75 Progress report of the Working Group on the International Sale of Goods on the work of its fourth session (New York, 22 January-2 February 1973)
- A/CN.9/76 and Add.1 International legislation on shipping: report of the Working Group on the work of its fifth session, held in New York from 5 to 16 February 1973
- A/CN.9/77 International payments: Negotiable Instruments: Draft Uniform Law on International Bills of Exchange and International Promissory Notes: report of the Working Group on International Negotiable Instruments on the work of its first session (Geneva, 8-19 January 1973)
- A/CN.9/78 General conditions of sale and standard contracts: report of the Secretary-General
- A/CN.9/79 and Add.1 International commercial arbitration: summary of the comments by members of the Commission on the proposals of the Special Rapporteur: report of the Secretary-General
- A/CN.9/80 Training and assistance in the field of international trade law: report of the Secretary-General
- A/CN.9/81 The establishment of a union for "jus commune" in matters of international trade-analysis of comments and observations by Governments: report of the Secretary-General

- A/CN.9/82 Current activities of international organizations related to the harmonization and unification of international trade law: report of the Secretary-General
- A/CN.9/83 Multinational enterprises: note by the Secretary-General
- A/CN.9/84 Provisional agenda, notes on the provisional agenda, and tentative schedule of meetings: note by the Secretary-General

B. Limited series

- A/CN.9/L.23 International payments: revision of the Uniform Customs and Practice for Documentary Credits: note by the Secretary-General
- A/CN.9/L.24 Uniform rules relating to the validity of contracts of international sale of goods: note by the Secretary-General

C. Restricted series

- A/CN.9/VI/CRP.1 and Add.1 to 9 Draft report of the United Nations Commission on International Trade Law on the work of its sixth session (2 to 13 April 1973)
- A/CN.9/VI/CRP.2 International commercial arbitration: proposal of the Drafting Group

D. Information series

- A/CN.9/INF.5 List of delegations

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