

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

13-17 May 1974

GENERAL ASSEMBLY

OFFICIAL RECORDS: TWENTY-NINTH SESSION

SUPPLEMENT No.17 (A/9617)



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NOTE

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

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INTRODUCTION

The present report of the United Nations Commission on International Trade Law covers the Commission's seventh session, held at New York from 13 to 17 May 1974.

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 seventh session on 13 May 1974. The session was opened on behalf of the Secretary-General by Mr. Blaine Sloan, Director of the General Legal Division, Office of Legal Affairs.

B. Membership and attendance

2. General Assembly resolution 2205 (XXI) established the Commission with a membership of 29 States, elected by the Assembly. By resolution 3108 (XXVIII), the General Assembly increased the membership of the Commission from 29 to 36 States. The present members of the Commission, elected on 12 November 1970 and 12 December 1973, are the following States: 1/ Argentina, Australia,* Austria,* Barbados, Belgium, Brazil, Bulgaria, Chile,* Cyprus, Czechoslovakia, Egypt,* France,* Gabon, Germany (Federal Republic of), Ghana,* Greece, Guyana,* Hungary, India, Japan,* Kenya, Mexico, Nepal,* Nigeria,* Norway,* Philippines, Poland,* Sierra Leone, Singapore,* Somalia,* Syrian Arab Republic, Union of Soviet Socialist Republics,* United Kingdom,* United Republic of Tanzania,* United States of America, and Zaire.

3. With the exception of Gabon and Somalia all members of the Commission were represented at the session.

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

(a) United Nations organs

United Nations Conference on Trade and Development

1/ Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years, except that, in connexion with the initial election, the terms of 14 members, selected by the President of the Assembly, by drawing lots, expired at the end of three years (31 December 1970); the terms of the 15 other members expired at the end of six years (31 December 1973). Accordingly, the General Assembly, at its twenty-fifth session elected 14 members to serve for a full term of six years, ending on 13 December 1976, and, at its twenty-eighth session, elected 15 members to serve for a full term of six years, ending on 31 December 1979. The General Assembly, at its twenty-eighth session, also elected seven additional members. Of these additional members, the terms of three members, selected by the President of the Assembly, by drawing lots, will expire at the end of three years (31 December 1976) and the terms of four members will expire at the end of six years (31 December 1979). The terms of the members marked with an asterisk will expire on 31 December 1976. The terms of the other members will expire on 31 December 1979.

(b) Specialized agencies

International Monetary Fund

(c) Intergovernmental organizations

Commission of the European Communities, Council for Mutual Economic Assistance, International Institute for the Unification of Private Law

(d) International non-governmental organizations

International Chamber of Commerce, International Chamber of Shipping, International Law Association, International Union of Marine Insurance, National Association of Credit Management

C. Election of officers

5. The Commission elected the following officers by acclamation: 2/

Chairman	Mr. Jerzy Jakubowski (Poland)
Vice-Chairman	Mr. Khadga Bhakta Singh (Nepal)
Vice-Chairman	Mr. Nehemias Gueiros (Brazil)
Vice-Chairman	Mr. Emmanuel Sam (Ghana)
Rapporteur	Mr. Roland Loewe (Austria)

D. Agenda

6. The agenda of the session as adopted by the Commission at its 143rd meeting, on 13 May 1974, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda; tentative schedule of meetings.

2/ The elections took place at the 143rd and 144th meetings, on 13 and 14 May 1974, and at the 145th meeting on 15 May 1974. In accordance with a decision taken by the Commission at 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, Volume I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, chap. I, para. 14)).

4. International sale of goods: uniform rules governing the international sale of goods.
5. International payments:
 - (a) Uniform law on international bills of exchange and international promissory notes;
 - (b) Bankers' commercial credits;
 - (c) Bank guarantees (contract and payment guarantees).
6. International legislation on shipping.
7. Multinational enterprises.
8. Ratification of or adherence to conventions concerning international trade law.
9. Training and assistance in the field of international trade law.
10. Liability for damage caused by products intended for or involved in international trade.
11. Future work.
12. Other business.
13. Date and place of eighth 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 seventh session were all reached by consensus.

F. Adoption of the report

8. The Commission adopted the present report at its 150th meeting, on 17 May 1974.

CHAPTER II

INTERNATIONAL SALE OF GOODS

Uniform rules governing the international sale of goods

Report of the Working Group

9. The Commission had before it the report of the Working Group on the International Sale of Goods on the work of its fifth session, held at Geneva from 22 January to 1 February 1974 (A/CN.9/87). The report sets forth the further progress made by the Working Group in implementing the Commission's mandate 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 such uniform rules capable of wider acceptance. 3/

10. The report describes the action taken by the Working Group at its fifth session with respect to articles 58 to 101 of ULIS. By this action the Working Group completed the initial examination of the text of the uniform law. The report also sets forth (annex I) the revised text of the uniform law, which is the result of action taken by the Working Group at its first five sessions. 4/ The report includes the comments and proposals by Governments that were considered by the Working Group (annexes II and III) and the report of the Secretary-General on issues presented by chapters IV to VI of ULIS (annex IV).

11. The report indicates that the Working Group, in examining chapter IV (Obligations of the buyer), considered it necessary to revise the provisions of ULIS dealing with the time and place of payment in order to provide a clearer and more unified treatment of the subject. 5/ The Working Group also decided to consolidate the separate sets of remedies afforded the buyer in chapter IV of ULIS, in line with the action taken at its fourth session consolidating the

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)). 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)). The 1964 Hague Convention Relating to a Uniform Law on the International Sale of Goods and annexed Uniform Law (ULIS), appear in the Register of Texts of Conventions and Other Instruments Concerning International Trade Law, vol. I, United Nations publication, Sales No.: E.71.V.3) at chap. I, 1).

4/ Certain of the provisions of the revised text were deferred for further consideration by the Working Group. See para. 15 infra.

5/ A/CN.9/87, paras. 26-35.

separate sets of remedies afforded the seller in chapter III. 6/ The Working Group noted that such consolidation achieved a substantial simplification of the law, and solved problems which had resulted from overlapping and inconsistent rules in the various remedial provisions. 7/

12. With respect to chapter V of ULIS (Provisions common to the obligations of the seller and the buyer), the Working Group drafted revised legislative texts dealing with suspension of performance by either party, exemptions, avoidance of the contract and the measurement of damages, including the mitigation of loss resulting from breach. 8/

13. With respect to chapter VI (Passing of the risk), the Working Group approved a unified set of rules which brought together provisions that had appeared in various parts of ULIS, and modified the provisions so that the rules on risk would be based on the significant commercial steps in the performance of sales contracts, rather than on abstract concepts. 9/

14. As a result of the various measures taken by the Working Group to consolidate and unify the provisions of ULIS, the revised text set forth in annex I of the report comprises 69 articles, as compared with the 101 articles of ULIS. It has been noted that the length and complexity of ULIS has been a subject of widespread comment, and that meeting these criticisms should be of assistance in facilitating the more widespread adoption of the uniform law. 10/

15. The report of the Working Group notes that the Group had not yet reached a final conclusion with respect to certain articles in the revised text of the uniform law as set forth in annex I. Consequently, in planning its future work, the Working Group requested the Secretariat to circulate this revised text, for comments and proposals, among representatives of member States of the Working Group and observers. The Working Group further requested the Secretariat, taking into consideration such comments and proposals, to prepare a study of the pending questions, including possible solutions thereof, for use by the Working Group at its sixth session.

Consideration of the report by the Commission

16. All representatives who spoke on the subject congratulated the Working Group on the progress it had made in completing the initial examination of the text of ULIS, as reflected in the revised text set forth in annex I to the report. It was agreed that, in line with the usual practice of the Commission, the Commission

6/ Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 17 (A/9017), para. 12.

7/ A/CN.9/87, paras. 37-39.

8/ Ibid., paras. 88-156.

9/ Ibid., paras. 206-244 and annex IV, paras. 64-105; A/CN.9/62, annex II, para. 17.

10/ A/CN.9/75, annex II, paras. 101, 158-162 and 177; A/CN.9/87, annex IV, para. 22.

would not take decisions with respect to the substance of the draft until the Working Group had completed its work. 11/

17. Some representatives expressed the hope that the Working Group would be able to complete its work on the draft uniform law at its sixth session, to be held in February 1975. One representative expressed the view that the Commission should request the Working Group to complete its work before its eighth session. It was observed that, in accordance with the procedure that had been adopted with respect to the draft Convention on Prescription (Limitation) in the International Sale of Goods, the revised text of the uniform law prepared by the Working Group should be transmitted to members of the Commission for study in advance of the final review and approval of a text by the Commission. It was noted that Governments might need several months for this study; consequently, a draft completed by the Working Group (e.g., in February 1975) probably could not be acted upon by the Commission during the session to be held in the spring or summer of the same year, but would have to be deferred until the 1976 session. To bring the work to fruition as soon as possible, it was suggested that if the Working Group believed that it could not complete its work in the two-week session in February 1975 that it had proposed, that session should be extended to three weeks.

18. Other representatives agreed that the draft uniform law should be finalized as soon as possible, but suggested that the quality of the work should not be jeopardized by establishing an unrealistic deadline for the completion of the work. Some representatives noted that the Working Group had not reached agreement on several important questions and stated that as many of these questions as possible should be resolved by the Working Group before the draft uniform law was referred to the Commission. In this connexion, it was noted that the Commission's final review of a draft uniform law of such length and importance would take a substantial period of time, and that this review could hardly be completed successfully at one session of the Commission unless the review was based on provisions that had reached a wide measure of acceptance within the Working Group. It was also observed that a working group session of three weeks presented practical difficulties for some representatives and Governments.

19. It was suggested that the question of the length and timing of the next session of the Working Group on the International Sale of Goods should be considered in relation to schedules for other working groups. The Commission agreed to consider all such schedules together under agenda item 11. Future Work: (See chap. IX, infra, para. 85.)

Decision of the Commission

20. The Commission, at its 150th meeting, on 17 May 1974, adopted unanimously the following decision:

11/ Official Records of the General Assembly, 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)).

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 fifth session;
2. Recommends that the Working Group consider the comments and proposals made at the seventh 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.

CHAPTER III

INTERNATIONAL PAYMENTS

A. Negotiable instruments

Report of the Working Group

21. The Commission had before it the report of the Working Group on International Negotiable Instruments on the work of its second session, held at New York from 7 to 18 January 1974 (A/CN.9/86). The report sets forth the progress made by the Working Group (i) in preparing a final draft uniform law on international bills of exchange and international promissory notes, and (ii) in considering the desirability of preparing uniform rules applicable to international cheques. 12/

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

22. As indicated in the report, the Working Group at its second session considered articles 42 to 62 of the draft uniform law on international bills of exchange and promissory notes prepared by the Secretary-General in response to a decision by the Commission. 13/ The proposed uniform law will establish uniform rules applicable to an international instrument (bill of exchange or promissory note) for optional use in international payments.

23. The report sets forth the deliberations and conclusions of the Working Group with respect to the liability of an endorser, the rights and liabilities of a guarantor, presentment for acceptance and payment, dishonour and recourse.

24. The Working Group was of the opinion that the uniform law should make provision for liability on an international instrument by way of guarantee, and approved rules in respect of a person guaranteeing on such instrument the obligation of another party.

25. With respect to presentment of an international instrument for acceptance or for payment, the dishonour of the instrument by non-acceptance or by non-payment, any necessary protest in the event of such dishonour and the giving of notice of

12/ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717), para. 61 (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.

13/ Official Records of the General Assembly, 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. The draft uniform law and commentary are set forth in A/CN.9/WG.IV/WP.2.

dishonour, the Working Group reached agreement on detailed provisions setting forth the rights and duties of parties and the legal effects of non-compliance with prescribed rules. The Working Group reported that it had not yet reached final conclusions on certain issues arising in the context of presentment of an instrument, pending further inquiries by the Secretariat on commercial practices in this respect.

(ii) Uniform rules applicable to international cheques

26. The Commission, at its fifth session, also requested its Working Group on International Negotiable Instruments to consider the desirability of preparing uniform rules applicable to international cheques, and to consider whether this can best be achieved by extending the application of the draft uniform law on international bills of exchange and international promissory notes to international cheques or by drawing up a separate uniform law on international cheques. The Working Group was requested to report its conclusions on these questions to the Commission at a future session. The report of the Working Group notes that the Working Group requested 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. The Working Group reported that such inquiries were now under way and that, at a future session, it would consider an analysis of the replies received from banking and trade institutions to a questionnaire drawn up by the Secretariat in consultation with the UNCITRAL Study Group on International Payments.

Consideration of the report by the Commission

27. The Commission, in accordance with its general policy of considering the substance of the work carried out by working groups only upon completion of that work, took note of the report of the Working Group on International Negotiable Instruments. Representatives who spoke on the subject expressed satisfaction with the progress being made by the Working Group.

28. The Commission decided to consider the timing of the third session of the Working Group in relation to schedules for other working groups under item 11 of the agenda: Future work (see chapter IX, infra, para. 85).

Decision of the Commission

29. The Commission, at its 144th meeting on 13 May 1974, 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 second session;

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

3. Requests the Secretary-General to carry out further work in connexion with the draft uniform law on international bills of exchange and international promissory notes and with the inquiries 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

30. This subject is concerned with the revision by the International Chamber of Commerce (ICC) of "Uniform Customs and Practice for Documentary Credits", drawn up in 1933 and subsequently revised in 1951 and 1962. At its previous session, 14/ the Commission stressed the importance of commercial letters of credit in ensuring 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. Accordingly, the Commission, at its third session, requested the Secretary-General to invite Governments and interested banking and trade institutions to communicate to him, for transmission to ICC, their observations on the operation of "Uniform Customs and Practice for Documentary Credits", so that these observations could be taken into account by ICC in its work of revision. 15/ The observations so received were transmitted to ICC for consideration.

31. At the present session, 16/ the Commission had before it a note by the Secretary-General reproducing a note by ICC concerning the progress made by it in respect of the revision of "Uniform Customs and Practice for Documentary Credits" and of its work on bank guarantees. The commission's deliberation and decision in respect of bank guarantees are set forth in part C of this chapter (paras. 36 and 37 infra).

14/ Official Records of the General Assembly, 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).

15/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/8017), para. 125 (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).

16/ The Commission considered this subject in the course of its 144th and 150th meetings, held on 13 and 17 May 1974.

32. The Commission took note of the fact that the Commission on Banking Technique and Practice of ICC had adopted, in February 1974, a draft revised text of "Uniform Customs", the text of which was annexed to the note by ICC. The Commission also noted that the text submitted to it was subject to further revision and that a final text would be adopted by the Council of ICC later in the year. In its note, ICC informed the Commission that the draft text had been established after consideration of the comments and suggestions submitted by its national committees and, through the secretariat of the Commission, by countries not represented in ICC. ICC also reported that the draft text had been considered by the Ad Hoc Working Group on Banking Technique of the Liaison Committee of ICC with the Chambers of Commerce of socialist countries.

33. Many representatives expressed their appreciation for the work carried out by ICC in respect of the revision of "Uniform Customs". It was generally recognized that the "Uniform Customs" standardized the procedures and practices employed by banks in respect of commercial letters of credit and as such could be characterized as a private convention between bankers and their clients. Some representatives were of the opinion that, in view of the fact that the interests of non-banks, in particular those of the vendor-beneficiary, were involved, the Commission should give careful attention to the revised text of "Uniform Customs". Other representatives took the view that the main object of the Commission's interest in the subject had been to create a channel for communication between ICC and countries not represented in ICC, and that that object had been achieved. In the opinion of these representatives, the final responsibility for the revised text of "Uniform Customs" fell to ICC and it was important that the revised text be adopted and applied without undue delay.

34. There was general agreement among representatives that, while the Commission could not adopt the revised text of "Uniform Customs", it should consider, at its next session, the desirability of commending the use of "Uniform Customs" in transactions involving the establishment of a documentary credit. In this connexion, the Commission requested the Secretariat to prepare an analysis of the observations received by the Secretary-General in respect of the 1962 version of "Uniform Customs", with a view to examining whether the revised text reflected these observations.

Decision of the Commission

35. The Commission, at its 144th meeting on 13 May 1974, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Takes note of the progress report submitted by the International Chamber of Commerce on its work of revision of "Uniform Customs and Practice for Documentary Credits";

2. Commends the International Chamber of Commerce and its Commission on Banking Technique and Practice, on having carried out the work of revision in co-operation with the Commission;

3. Invites the International Chamber of Commerce to transmit to it the revised text of "Uniform Customs and Practice for Documentary Credits" upon the adoption thereof by ICC;

4. Requests the Secretary-General:

(a) To transmit the revised text of "Uniform Customs and Practice for Documentary Credits" to the States members of the Commission;

(b) To prepare an analysis of the observations received in respect of "Uniform Customs and Practice for Documentary Credits" and to submit this analysis to the Commission at its eighth session.

C. Bank guarantees

36. The Commission took note of the progress made by the International Chamber of Commerce (ICC) in respect of the preparation of uniform rules on contract guarantees and on payment guarantees. The view was expressed that the Commission should follow this work closely in view of the fact that ICC was carrying out the work at the invitation of the Commission. It was emphasized that the proposed rules should establish a just equilibrium between the interests of the parties concerned.

Decision of the Commission

37. The Commission, at its 150th meeting on 17 May 1974, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Takes note of the progress made by the International Chamber of Commerce in respect of the preparation of uniform rules on contract guarantees and payment guarantees;

2. Requests the Secretary-General:

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

(b) To refer the work of the International Chamber of Commerce in respect of contract and payment guarantees to the Commission's Study Group on International Payments, composed of experts provided by interested international organizations and banking and trade institutions, and to invite to the meetings convened for this purpose interested representatives on the Commission;

3. Invites the International Chamber of Commerce to submit to the Commission at future sessions progress reports on its work on contract and payment guarantees.

CHAPTER IV. INTERNATIONAL LEGISLATION ON SHIPPING

Report of the Working Group

38. The Commission, at its fourth session, decided to examine the rules governing the responsibility of ocean carriers for cargo in the context of bills of lading. The Commission established an enlarged Working Group on International Legislation on Shipping of 21 members of the Commission to carry out this task. 17/

39. The Commission had before it the report of the Working Group on International Legislation on Shipping on the work of its sixth session. 18/ The report sets forth the progress made by the Working Group at that session to revise the rules of the 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Brussels Convention of 1924) and the 1968 Brussels Protocol thereto. 19/ As indicated in the report, the Working Group at its sixth session considered and took action with respect to the following topics: liability of ocean carriers for delay; documentary scope of the convention; geographic scope of the convention; elimination of invalid clauses in bills of lading; carriage of cargo on deck; carriage of live animals; definition of "carrier", "contracting carrier" and "actual carrier"; and definition of "ship". The report includes, in the form of an annex, a compilation of draft provisions that have been approved by the Working Group at its previous five sessions.

17/ 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)). 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)), 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). 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, and the report of the Commission on the work of its sixth session, ibid., Twenty-eighth Session, Supplement No. 17 (A/9017), paras. 46-61.

18/ A/CN.9/88 and A/CN.9/88/Add.1 (Third report of the Secretary-General on responsibility of ocean carriers for cargo: bills of lading).

19/ The texts of the 1924 Brussels Convention and of the 1968 Brussels Protocol appear in the Register of Texts of Conventions and other Instruments Concerning International Trade Law, Vol. II, chap. II, part I (United Nations publication, Sales No.: E.73.V.3). The report noted that, in defining the task of the Working Group, the Commission decided "that a new international convention may, if appropriate, be prepared for adoption under the auspices of the United Nations" (A/CN.9/88, para. 2).

40. The Working Group decided that it would be desirable to include a specific provision dealing with the carrier's responsibility for loss or damage caused by delay. Accordingly, the Working Group adopted a definition of "delay", two alternatives for delimiting the maximum amount of liability of carriers for loss or damage caused by delay, and a provision covering the case where the goods are presumed lost due to an extended delay in their delivery. 20/

41. With respect to the effect on the scope of the Convention of the use of certain documents to evidence the contract of carriage, the Working Group favoured extension of the Convention so that it would be applicable to all contracts for the carriage of goods by sea. The Working Group left open the question whether, in a case where no bill of lading is issued, the parties should have the possibility of excluding their contract from the coverage of the Convention by an express agreement to this effect. 21/

42. There was agreement within the Working Group that the geographic scope of the Convention should be expanded so that a contract for the carriage of goods by sea would be governed by the Convention if either the port of loading or the port of discharge was in a Contracting State, or if the bill of lading or other document evidencing the contract of carriage was issued in a Contracting State. 22/

43. The Working Group adopted draft provisions designed to clarify the effect of the rules of the Convention with respect to contract provisions that are inconsistent with such rules, and to provide compensation for loss or damage, within the limits set by the Convention, for loss or damage suffered as a consequence of the inclusion of such invalid contract provisions. 23/

44. The Working Group decided to extend the applicability of the Convention (a) to goods carried on deck, and (b) to the carriage of live animals. However, with respect to the carriage of live animals, the Working Group expressly provided that the carrier would not be liable for loss or damage that resulted from the special risks inherent in carriage of that kind. 24/

45. The Working Group adopted definitions for the terms "carrier", "contracting carrier" and "actual carrier". In this fashion the Working Group clarified the identity of the carrier against whom shippers or consignees should assert claims for loss or damage, particularly in cases where the goods were transshipped or where the person with whom the shipper contracted for the carriage of the goods did not in fact carry them, but instead arranged for another carrier to transport the goods. 25/

46. The report of the Working Group noted the substantial progress made with

20/ A/CN.9/88, paras. 10-28.

21/ Ibid., paras. 29-49.

22/ Ibid., paras. 50-69.

23/ Ibid., paras. 70-95.

24/ Ibid., paras. 96-117.

25/ Ibid., paras. 118-136.

respect to the specific topics referred to it by the Commission. 26/ The Working Group recommended to the Commission that, in order to expedite the completion of its work, it should hold a further session in the autumn of 1974. The Working Group decided that the next (seventh) session would deal with (1) contents of the contract for carriage of goods by sea; (2) validity and effect of letters of guarantee; (3) protection of good faith purchasers of bills of lading. In addition, the Working Group decided that its seventh session would also consider any other topics necessary to complete the initial consideration of the rules of the 1924 Brussels Convention and the 1968 Protocol.

Consideration of the report by the Commission

47. It was noted during the discussion of the report that, since the drafting of the revised rules on the responsibility of ocean carriers had not at this stage been completed, the Commission would follow its usual practice of considering the progress made by the Working Group and would take decisions when the draft rules approved by the Working Group could be considered as a whole.

48. All representatives who spoke on the subject expressed their satisfaction with the progress of the Working Group in carrying out its mandate. Many representatives stressed the importance of revising the existing international rules concerning the responsibility of ocean carriers so as to take account more adequately of the interests of the developing countries and of shippers in general. Some representatives emphasized the importance of continued progress in the work, in view of the recommendation by UNCTAD that UNCITRAL should expeditiously prepare revised legal rules in this area.

49. Most representatives were of the opinion that the Working Group would probably need two more sessions to complete its task. At the next (seventh) session of the Working Group, the first reading of the revised rules on the responsibility of ocean carriers could be completed, 27/ while the eighth session of the Working Group could be concerned with the second reading of these revised rules. Some representatives stated that the Working Group should decide at its next session whether the revised rules should take the form of a revision of the 1924 Brussels Convention and its 1968 Protocol or whether "a new international convention ... be prepared for adoption under the auspices of the United Nations". 28/

50. There was general agreement that the Working Group should complete its work as expeditiously as possible. Representatives expressed support for the request by the Working Group that its seventh session be held in Geneva from 30 September-11 October 1974, and its eighth session in New York in January or February 1975. Some representatives expressed the hope that this schedule would enable the Working Group to present a final text of the revised rules to the eighth session of the Commission. It was observed by several representatives that it might not be feasible for the Commission to consider the final draft text at its eighth session, since

26/ The topics dealt with by the Working Group at its previous sessions are summarized in its report (A/CN.9/88), para. 2.

27/ See para. 9 above for the topics to be considered at the seventh session of the Working Group.

28/ A/CN.9/88, para. 2.

upon its adoption by the Working Group the final text should be sent to States Members of the United Nations for observations and an analysis of these observations would have to be prepared; in the view of these representatives the Commission would therefore not be in a position to consider the final text of the revised rules prior to its ninth session. Another representative proposed that the final draft of the revised rules be sent only to States members of the Commission, since the draft rules, following their approval by the Commission, would be considered by a diplomatic conference.

51. It was stated that, in view of the short time available between the final session of the Working Group on Shipping in February 1975 and the regularly scheduled eighth session of UNCITRAL in April 1975, it would not be possible for the final document to be prepared and transmitted to Governments so that they might comment on the draft text. It was also considered that, even if the eighth session of UNCITRAL were postponed until the late summer or early autumn of 1975, it would still not be possible for Governments to take account of the views of shipowners, shippers, insurers and financial institutions in preparing comments on the draft text. Finally, it was agreed that the draft text should be given the widest possible distribution to Governments and interested international organizations prior to the discussion of the draft text by the Commission. Accordingly, it was decided that the final draft of the Working Group on Shipping should be discussed at the ninth session of the Commission.

52. Some representatives stated that rules regarding the required contents of the contract of carriage, a topic to be considered by the Working Group at its seventh session, should be such as to offer strong safeguards for shipper and good faith purchasers of the document evidencing the contract of carriage. One representative, commenting on the draft provisions on delay approved by the Working Group, expressed his support for alternative A which incorporated the single method for limitation of the carrier's liability. 29/ The same representative urged that shippers be afforded protection against possible abuse, should the bracketed language be retained in the draft provision on the documentary scope of the Convention, permitting express agreement that the Convention not be applicable if no document evidencing the contract of carriage was issued. 30/ That representative also favoured deletion of the bracketed language in the draft provision on carriage of goods on deck, that would permit such carriage if it was in accordance "with the common usage of the particular trade". 31/

Decision of the Commission

53. The Commission, at its 150th meeting, on 17 May 1974, 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 Legislation on Shipping on the work of its sixth session;

29/ A/CN.9/88, para. 26 (a); Limitation of liability: alternative A.

30/ A/CN.9/88, para. 48 (a) (2).

31/ A/CN.9/88, para. 103 (a) (1).

2. Recommends that the Working Group consider the comments and proposals made at the seventh 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 fourth session and complete the work expeditiously;

4. Requests the Secretary-General:

- (a) To transmit the draft uniform rules on the subject, when completed by the Working Group, to Governments and interested international organizations for their comments;
- (b) To prepare an analysis of such comments for consideration by the Commission at its ninth session.

CHAPTER V

MULTINATIONAL ENTERPRISES

54. The General Assembly, at its twenty-seventh session, adopted resolution 2928 (XXVII) on the report of the United Nations Commission on International Trade Law on the work of its fifth session. 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".

55. In response to a decision taken by the Commission at its sixth session, 32/ the Secretariat drew up a questionnaire concerning legal problems presented by multinational enterprises and addressed the questionnaire to Governments and international organizations.

56. At the present session, 33/ the Commission had before it a note by the Secretary-General (A/CN.9/90), setting forth the text of the questionnaire and information in respect of the number of replies so far received from Governments, United Nations organs and agencies, and international and national organizations. It was noted that most of the replies had been received recently, and that other replies were expected.

57. The Commission was informed by the Secretariat that studies by other bodies referred to in the resolution of the General Assembly were currently in progress, but that it was expected that the report of the Secretary-General requested by it at its sixth session for submission to a future session 34/ could be prepared in time for its eighth session.

58. Several representatives stressed the importance of the subject to international trade and the need for internationally agreed rules in respect of multinational enterprises. Other representatives were of the view that the Commission could not make a significant contribution to the solution of problems arising in the context of multinational enterprises; however, they were not opposed to any action on the part of the Commission. Reference was made to the fact that a report of the Group of Eminent Persons, appointed by the

32/ Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 17 (A/9017), para. 116.

33/ The subject was considered by the Commission at its 146th meeting held on 14 May 1974.

34/ Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 17 (A/9017), para. 116.

Secretary-General under Economic and Social Council resolution 1721 (LIII), would be issued in the near future for consideration by the Council at its fifty-seventh session, to be held at Geneva in July 1974. In this regard, the hope was expressed that the recommendations for appropriate international action which the Group would submit would recognize the mandate given by the General Assembly to the Commission in respect of the legal aspects of the subject of multinational enterprises.

Decision of the Commission

59. The Commission, at its 146th meeting, on 14 May 1974, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

Requests the Secretary-General to submit to the Commission, for consideration at its eighth session, a report setting forth:

- (a) An analysis of the replies received from Governments and international organizations to the questionnaire drawn up at its request concerning legal problems presented by multinational enterprises;
- (b) A survey of available studies, including those by United Nations organs and agencies, in so far as these studies disclose problems arising in international trade because of the operations of multinational enterprises, which are susceptible of solution by means of 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.

CHAPTER VI

RATIFICATION OF OR ADHERENCE TO CONVENTIONS CONCERNING INTERNATIONAL TRADE LAW

60. The Commission had before it a report by the Secretary-General, prepared in response to a decision taken by it at its sixth session, 35/ regarding the ratification of or adherence to conventions concerning international trade law. 36/ The report takes into account information received from other United Nations organs and specialized agencies and the views expressed by representatives to the Commission in reply to inquiries by the Secretariat. The report (a) discusses the possible causes of delay in ratification or adherence that may originate at the preparatory stages of work on a convention and those that are related to the implementation of conventions on the national level; (b) describes procedures and methods that have been designed for the purpose of accelerating the adoption and implementation of international rules, and (c) sets forth conclusions and suggestions as to procedures that may be useful with respect to the ratification of or adherence to conventions concerning international trade law.

61. The Commission noted the procedures developed by the International Civil Aviation Organization and the World Health Organization, under which rules adopted by those agencies become binding upon a member State unless such State has declared, before a specified date, that it did not wish to become bound. It was observed that these procedures were used only in the context of international rules and standards that were of a technical nature.

62. One representative suggested that the Commission should consider the question of ratification of conventions in consultation with the International Law Commission.

63. The Commission, after deliberation, agreed that the question of ratification could more usefully be taken up by it at a future session after the Convention on Prescription (Limitation) in the International Sale of Goods had been concluded. The view was expressed that it would be more profitable to consider the causes of non-ratification with reference to a specific convention prepared by UNCITRAL. For this reason, the Commission was of the opinion that it was premature to establish a new working group for the subject or to appoint a special rapporteur.

35/ Ibid., para. 132.

36/ The Commission considered this item at its 147th meeting on 15 May 1974. As regards previous documentation related to the item, see A/CN.9/60 setting forth the proposal by the French delegation for the establishment of a union for jus commune, and A/CN.9/81 setting forth the comments on this proposal by member States of the Commission.

Decision of the Commission

64. The Commission, at its 147th meeting on 15 May 1974, adopted unanimously the following decision:

The United Nations Commission on International Trade Law decides:

(a) To maintain on its agenda the question of the ratification of or adherence to conventions concerning international trade law;

(b) To re-examine this question at its ninth session with special reference to the state of ratification then obtaining in respect of the Convention on the Limitation Period in the International Sale of Goods.

CHAPTER VII

TRAINING AND ASSISTANCE IN THE FIELD OF INTERNATIONAL TRADE LAW

65. The Commission had before it a note by the Secretary-General (A/CN.9/92), setting forth the activities that had been undertaken to implement the Commission's decision on the subject of training and assistance in the field of international trade law. 37/

66. In introducing the note by the Secretary-General, the Secretary of the Commission informed the Commission that the Governments of Austria and Belgium had each offered two internships for lawyers and government officials from developing countries during 1974, and that the process of selecting the interns was currently under way. The Secretariat has been advised that the Government of Belgium had renewed its offer of internships for 1975.

67. The Secretary of the Commission outlined the plans for holding a symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law, in accordance with a decision adopted by the Commission at its sixth session. 38/ It was reported that the following sums had been committed by Governments in response to a request by the Secretary-General for voluntary contributions to cover the cost of travel and subsistence of participants from developing countries: Norway, \$US 8,000; Sweden, 5,000 Swedish kronor (about \$US 1,150); Austria, 25,000 Austrian schillings (about \$US 1,300); and Kuwait, expenses of participants from that country.

68. There was general agreement with the plans for the symposium as proposed in the note by the Secretary-General. 39/ The discussion of the plans included suggestions with respect to the topics, among those to be considered at the eighth UNCITRAL session, which would be of most interest to the participants, and observations concerning the importance of advance circulation of the preparatory material for the symposium and the significance of the proposed discussion of the scope of courses on international trade law.

69. The representative of the Federal Republic of Germany stated that his Government would make a voluntary contribution of 25,000 DM (about \$US 10,000) to cover the travel and subsistence expenses of participants from developing countries and that his Government would also provide assistance to experts of the Federal Republic of Germany attending the symposium.

37/ The Commission's decision and action in the General Assembly at its twenty-eighth session are described in document A/CN.9/92, paras. 1-3; the implementation of the Commission's decisions is described in paras. 4-19 and the annex of that document.

38/ Report of the United Nations Commission on International Trade Law on the work of its sixth session (1973), Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 17 (A/9017), para. 107.

39/ A/CN.9/92, paras. 9-19, and annex.

70. One representative suggested that consideration should be given to inviting lawyers from developing countries doing postgraduate work in the neighbourhood of the symposium (e.g. in Switzerland), since the travel expenses for such participants at the symposium would be rather small.

71. The observer for the Council for Mutual Economic Assistance (CMEA) announced that his organization has recently established a scholarship fund to aid students from developing countries, and that for 1974, 420 scholarships were available for students from 24 developing countries.

72. The representative of Australia repeated the offer of his Government to award a \$5,000 fellowship for the preparation in Australia, by a fellow from a developing country, of teaching materials for a course on international trade law.

73. Several representatives expressed their appreciation to those Governments that have provided practical internships, fellowships, or voluntary contributions for travel and subsistence expenses of participants at the symposium, and stated that they hoped that other developed countries would decide to provide similar assistance.

74. One representative drew attention to the importance of holding seminars in developing countries on international trade law. He stated that such seminars could be organized in co-operation with international institutions such as UNITAR.

CHAPTER VIII

LIABILITY FOR DAMAGE CAUSED BY PRODUCTS INTENDED FOR OR INVOLVED IN INTERNATIONAL TRADE

75. The General Assembly, at its twenty-eighth session, adopted resolution 3108 (XXVIII) of 12 December 1973 on the report of the United Nations Commission on International Trade Law on the work of its sixth session. In paragraph 7 of the resolution, the General Assembly invited the Commission:

"To consider the advisability of preparing uniform rules on the civil liability of producers for damage caused by their products intended for or involved in international sale or distribution, taking into account the feasibility and most appropriate time therefor in view of other items on its programme of work."

76. At the present session 40/ the Commission had before it a note by the Secretary-General (A/CN.9/93) setting forth background information pertaining to paragraph 7 of the General Assembly resolution and suggesting possible action by the Commission in response thereto.

77. The representative of Norway, whose Government had proposed to the General Assembly that the subject of products liability be included in the Commission's programme of work stated that it would be in the interest of the proper conduct of international trade if international rules were to be established governing the civil liability of producers for damage caused by their products to persons or their property. The Commission had encountered various kinds of problems that could arise in the context of such liability in the course of its work on uniform rules for the international sale of goods and on the convention on prescription (limitation) in the international sale of goods. However, significant aspects of products liability had been excluded from the scope of the uniform law on the international sale of goods and the convention on prescription (limitation) and it was desirable that the work in the field of international sale be supplemented by uniform rules governing products liability. In the opinion of the representative of Norway, the proposed uniform rules should not only govern the civil liability arising under a contract between buyer and seller but also the civil liability of the producer to a consumer, even though there was no contract between them, and in circumstances in which liability might not be based on rules of contract law. It was not only a question of the liability of the producer himself, but also of other persons that were intermediary between the producer and the consumer. He drew attention to the large number of lawsuits that had been brought in recent years and to the unsatisfactory attempts to distinguish, for the purpose of establishing liability, between contractual and extracontractual relationships. The existence of divergent national laws, imposing different degrees of liability, could affect the terms of trade in that a higher degree of liability gave rise to higher costs, including the cost of insurance. This could lead to distortion of trade.

40/ The subject was considered by the Commission at its 145th and 146th meetings, held on 14 May 1974.

78. Several representatives expressed themselves in favour of including the subject in the Commission's programme of work, but took the view that the Commission should take up the subject only upon completion of its work on uniform rules governing the international sale of goods.

79. Some representatives expressed doubts about the desirability of engaging in work on the subject. They pointed out that other international organizations, in particular the Hague Conference on Private International Law, the Council of Europe and the European Communities, had undertaken work in the field of products liability and that it would be advisable to await the results of that work. Doubts were also expressed whether the issue of the civil liability of producers fell within the competence of the Commission with respect to the harmonization and unification of international trade law, as conferred on the Commission by the General Assembly. ^{41/} It was suggested that the proposed topic was not primarily an issue of commercial law, in particular if the liability arose outside a contract for the international sale of goods. It was noted that, even in the context of the international sale of goods, the international instruments that were at present being prepared by the Commission excluded the sale of goods to consumers.

80. On the other hand, other representatives were of the opinion that the scope of the Commission's mandate, and the advisability of preparing uniform rules, should not depend on doctrinal distinctions between matters pertaining to civil and commercial law. In the view of these representatives, the liability of the producer could be considered as a commercial liability. The more relevant question was whether the absence of such rules could have an adverse impact on international trade. There was general agreement that a study on the main problems that arose in connexion with the preparation of uniform rules on the topic and a survey of the pending work of other organizations in the area would be necessary as a basis for a decision on these questions.

Decision of the Commission

81. The Commission, at its 146th meeting on 14 May 1974, adopted unanimously the following decision:

The United Nations Commission on International Trade Law,

Having regard to General Assembly resolution 3108 (XXVIII) of 12 December 1973,

Requests the Secretary-General to prepare a report for consideration by the Commission at its eighth session, setting forth:

(a) A survey of the work of other organizations in respect of civil liability for damage caused by products;

(b) A study of the main problems that may arise in this area and of the solutions that have been adopted therefor in national legislations or are being contemplated by international organizations;

(c) Suggestions as to the Commission's future course of action.

^{41/} General Assembly resolution 2205 (XXI).

CHAPTER IX

FUTURE WORK

A. General Assembly resolution 3108 (XXVIII) on the report of the Commission on the work of its sixth session

The Commission took note of this resolution.

B. Filling of vacancies in Working Groups

83. As a result of the expiration of the terms of office of some member States of the Commission, vacancies occurred in the Working Group on the International Sale of Goods and the Working Group on International Legislation on Shipping. The Commission appointed the following member States:

(a) Working Group on the International Sale of Goods: Czechoslovakia and Sierra Leone to replace Iran and Tunisia;

(b) Working Group on International Legislation on Shipping: Federal Republic of Germany to replace Spain.

84. With regard to the filling of the vacancies in the Working Group on the International Sale of Goods, it was understood that the nomination of Czechoslovakia in the place of Iran would in no way prejudice the representation of regional groups in that Working Group or any other Working Group and that a member of the group of Asian States, could, in the future, reoccupy the seat vacated by Iran. It was also understood that Czechoslovakia would be nominated for the duration of the Working Group's work on a uniform law on the international sale of goods and that the composition of the Working Group would be reconsidered when new tasks would be undertaken by it.

C. Date and place of sessions of the Commission and its Working Groups

85. After taking note of a statement on the financial implications of convening an extra session of the Working Group on International Legislation on Shipping in Geneva in 1974 (A/CN.9/95), the Commission decided that its eighth session and the sessions of its Working Groups should be scheduled to take place as follows:

(a) Eighth session of the Commission, at Geneva, from 1 to 18 April 1975;

(b) Seventh session of the Working Group on International Legislation on Shipping, at Geneva, from 30 September to 11 October 1974;

(c) Third session of the Working Group on International Negotiable Instruments, at Geneva from 6 to 17 January 1975;

(d) Eighth session of the Working Group on International Legislation on Shipping, at New York, from 27 January to 7 February 1975;

(e) Sixth session of the Working Group on International Sale of Goods, at New York, from 10 to 21 February 1975.

D. Programme of work

86. Several representatives noted that the work carried out by the Working Groups of the Commission was nearing completion and expressed the view that the Commission should endeavour to consider the draft texts submitted by the Working Groups according to the following schedule:

(a) Uniform rules on the liability of ocean carriers for loss or damage with respect to cargo: as soon as possible upon completion of the draft rules by the Working Group (expected in February 1975);

(b) Uniform law on the international sale of goods: at the session of the Commission following the session at which the draft uniform rules on the liability of ocean carriers ((a) above) are approved;

(c) Uniform law on international bills of exchange and international promissory notes: if possible at the session of the Commission following the session at which the draft uniform law on the international sale of goods is approved.

E. Other work in progress

87. The Secretariat reported to the Commission that, in addition to pending matters described in the foregoing chapters of the report, subjects that would be sufficiently advanced for consideration at the Commission's eighth session included the following: draft uniform arbitration rules for optional use in ad hoc arbitration relating to international trade; 42/ draft uniform general conditions of sale; 43/ a study of rules with respect to security interests in goods (e.g., conditional sales and trust receipts) that are relevant to international transactions. 44/

42/ Report of the United Nations Commission on International Trade Law on the work of its sixth session, Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 17 (A/9017), para. 85.

43/ Ibid., para. 24.

44/ Report of the United Nations Commission on International Trade Law on the work of its third session, Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/8017), para. 145; Report of the United Nations Commission on International Trade Law on the work of its fourth session, Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17 (A/8417), paras. 50-53.

CHAPTER X

OTHER BUSINESS

A. Report of the Secretary-General on current activities of other organizations

88. The Commission took note of this report (A/CN.9/94).

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

89. The Commission, at its sixth session, decided to consider at the present session the request of the President of the International Institute for the Unification of Private Law (UNIDROIT) that the Commission consider the "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. 45/

90. The representatives who spoke on the subject expressed their appreciation to UNIDROIT for having transmitted the draft law to the Commission. Several representatives noted the close connexion between the rules on validity embodied in the UNIDROIT draft and the rules governing the formation of contracts.

91. With respect to the formation of contracts, it was noted that the Diplomatic Conference on the Unification of Law Governing the International Sale of Goods, held at The Hague in April 1974, had, in addition to the Uniform Law on the International Sale of Goods (ULIS), also adopted a Uniform Law on the Formation of Contracts for the International Sale of Goods (ULFC). Several representatives expressed the view that the Working Group on the International Sale of Goods, after it had completed its work on the uniform law on the international sale of goods, should be requested to consider the establishment of uniform rules governing the validity of contracts for the international sale of goods on the basis of the UNIDROIT draft in connexion with its mandate to prepare uniform rules on formation. Some representatives were of the opinion that the uniform rules on validity and on formation should be the subject-matter of a single instrument. Other representatives took the view that it should be left to the Working Group to consider whether the rules on validity and formation should be the subject-matter of a single instrument or whether the issues could more appropriately be dealt with in separate instruments. Still other representatives were of the opinion that the Working Group should be free to consider whether it would be desirable and feasible to establish uniform rules on the validity of contracts for the international sale of goods.

45/ The decision of the Commission at its sixth session is set forth in Official Records of the General Assembly, Twenty-eighth session, Supplement No. 17 (A/9017), para. 148. The text of the draft law is set forth in UNIDROIT publication Etude XVI 1B, Doc. 22; U.D.P. 1972.

92. Some representatives suggested that the Commission should consider the advisability of preparing uniform rules governing the formation and validity of contracts in general to the extent that they were relevant to international trade. However, other representatives were of the view that questions of the validity and formation of contracts presented different aspects dependent on the commercial relationships to which the contract applied. The Working Group should therefore, in first instance, consider questions relating to the formation and validity of contracts for the international sale of goods, but should be empowered to consider whether the principles underlying the formation and validity of such contracts would also be applicable to other types of contract.

Decision of the Commission

93. The Commission, at its 147th meeting on 15 May 1974, adopted unanimously the following decision:

The United Nations Commission on International Trade Law

1. Expresses its appreciation to the International Institute for the Unification of Private Law (UNIDROIT) for having transmitted 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":

2. Decides to request its Working Group on the International Sale of Goods, after having completed its work on the uniform law on the international sale of goods, to consider the establishment of uniform rules governing the validity of contracts for the international sale of goods, on the basis of the above UNIDROIT draft, in connexion with its work on uniform rules governing the formation of contracts for the international sale of goods.

C. Private international law

94. One representative suggested that, at a future session, the Commission might consider undertaking work with respect to the unification of rules in the field of private international law (conflict of laws). Tribute was paid to the expertise in this field of the Hague Conference on Private International Law, and to the useful conventions that had been prepared under its auspices. However, it was observed that, although the Hague Conference was open to States from all parts of the world, many States were not members and the Conference did not have a governing body that was internationally representative. The Commission, in co-operation with the Hague Conference and avoiding duplication of work, might be able to secure wider participation in such work and more general adoption of uniform rules in this field. This suggestion was supported by another representative. Other representatives expressed reservations with respect to this suggestion: in this regard reference was made to the significance of unification of the substantive rules governing international trade law, and the special competence of the Hague Conference with respect to unification of rules of private international law.

95. It was agreed that no decision with respect to the above question should be taken by the Commission at the present session.

D. Bibliographies on international trade law

96. The Commission took note of the compilation of bibliographies on international trade law (A/CN.9/L.25); based on materials supplied by members of the Commission in response to invitation extended by the Commission at its fourth session. 46/

97. Appreciation was expressed for the preparation and compilation of this material. It was agreed that if other members should supply such bibliographical material within the field of the Commission's work, this material would be compiled and distributed as a document of the Commission in the form of a supplement to the above initial compilation. 47/

46/ Official Records of the General Assembly, Twenty-sixth session, Supplement No. 17 (A/8417), para. 137. Bibliographic material was supplied by Australia, Austria, Belgium, Brazil, Chile, Hungary, India, Italy, Romania, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics.

47/ See also: Survey of bibliographies relating to international trade law: report of the Secretary-General (A/CN.9/L.20 and Add.1), reproduced in the Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971.

ANNEX

LIST OF DOCUMENTS BEFORE THE COMMISSION

A. General series

A/CN.9/85	Provisional agenda, notes on the provisional agenda, and tentative schedule of meetings: note by the Secretary-General
A/CN.9/86	Report of the Working Group on International Negotiable Instruments on the work of its second session (New York, 7-18 January 1974)
A/CN.9/87	Progress report of the Working Group on the International Sale of Goods on the work of its fifth session (Geneva, 21 January-1 February 1974)
A/CN.9/88 and Corr.1 <u>a/</u> and 2 <u>b/</u> and Add.1	International legislation on shipping: Report of the Working Group on the work of its sixth session, held in Geneva from 4 to 20 February 1974
A/CN.9/89 and Corr.1 <u>c/</u>	International payments: Bankers' commercial credits; bankers' guarantees: note by the Secretary-General
A/CN.9/90	Multinational enterprises: Current status of work: note by the Secretary-General
A/CN.9/91	Ratification of or adherence to conventions concerning international trade law: report of the Secretary-General
A/CN.9/92 and Corr.1 <u>d/</u>	Training and assistance in the field of international trade law: note by the Secretary-General
A/CN.9/93	Liability for damage caused by products intended for or involved in international trade: note by the Secretary-General

a/ In Spanish only.

b/ In French only.

c/ In English, Russian and Spanish only.

d/ In French only

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