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INTERNATIONAL TRADE LAW
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THE ESTABLISHMENT OF AN UNCITRAL YEARBOOK

Report of the Secretary-General*

I. INTRODUCTION

1. The General Assembly on 18 December 1968 adopted resolution 2421 (XXIII) on the report of the first session of the United Nations Commission on International Trade Law; in paragraph 6(f) of this resolution the Assembly recommended that the Commission should "consider, when appropriate, the possibility of issuing a Yearbook which would make its work more widely known and more readily available."
2. In response to this recommendation, the Commission at its second session considered the question of issuing a yearbook and in its Report recorded the following position:

"The Commission was of the opinion that it was desirable to establish an UNCITRAL Yearbook to make the Commission's contribution in the field of international trade law more widely known and more readily available beyond the forum of the United Nations."1/

* This report is also being made available to the General Assembly at its twenty-fourth session (See document A/C.6/L.741).

1/ Report of the United Nations Commission on International Trade Law on the Work of its Second Session (3-31 March 1969), Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618), para. 162.

3. The Report (para. 163) noted varying views among members of the Commission concerning the time when the publication of a Yearbook should commence, and alternative suggestions concerning the approach and scope of the publication. A further issue concerned the relationship between the Yearbook and a Register of Organizations and Register of Texts which the General Assembly authorized by its resolution 2421 (XXIII) of 18 December 1969.^{2/} The Commission's position on this question was recorded as follows (para. 164 of the Report):

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

4. The Commission unanimously adopted the following decision concerning the Yearbook (para. 166 of the Report):

"The Commission requests the Secretary-General:

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

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

5. The Commission also noted the following plan for future action (*ibid.*):

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

II. THE YEARBOOKS OF OTHER BODIES

6. As was noted above (para. 4), the Commission requested the Secretary-General to make proposals for alternative forms of a Yearbook, taking into account the approaches of the Yearbooks of other comparable bodies.

^{2/} The plans for establishment of the registers are discussed in Chapter VI of the Commission's Report, paras. 134-141.

7. An examination of these Yearbooks reveals significant variations in content and approach; these variations reflect the objectives of the work in question and the functions of a Yearbook in relationship to that work.

United Nations Juridical Yearbook

8. The United Nations Juridical Yearbook, for instance, deals with legal activities throughout the United Nations and related organizations. This wide scope forces the Yearbook to be selective. Thus, the primary function of this Yearbook is to provide the texts of selected treaties and national laws concerning the status of the United Nations and related agencies; decisions and reports of a legal character by the United Nations and related intergovernmental organizations; treaties concerning international law concluded under the auspices of the United Nations; decisions by administrative tribunals of the United Nations and related organizations; selected legal opinions of the Secretariats; judicial decisions or questions relating to the United Nations. This vast range of topics makes it impossible for the Juridical Yearbook to present the background material needed for intensive study of individual problems. To meet this need, the Juridical Yearbook provides a detailed Legal Documents Index and legal bibliography.

Yearbook of the International Court of Justice

9. The Yearbooks of the International Court of Justice (published since 1947) provide the degree of detail needed to aid practitioners before the Court and students of its work. Thus, the Yearbooks' contents include: detailed information on the composition of the Court; descriptive material on the Court's jurisdiction and procedure; the history of past cases; a listing of meetings and decisions of the Court; docket lists of pending cases and actions entered in these cases; summaries of the substance of judgments and advisory opinions; a cumulative digest of past decisions; data on the Court's finances; and exhaustive bibliographies. The Court's decisions are reported in full in separate volumes - the Reports of Judgements, Advisory Opinions and Orders.

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Yearbook of the International Law Commission

10. The Yearbooks of the International Law Commission (published since 1949) are especially relevant to an UNCITRAL Yearbook for they provide detailed reporting of the evolution of the legal texts offered for adoption. The ILC Yearbooks comprise two volumes. Volume I contains the summary records; Volume II reproduces the Commission's report to the General Assembly and contains reports by Special Rapporteurs, studies by the Secretariat, comments by Governments, etc.

11. Taking the 1966 Yearbook of the International Law Commission as an example, Volume I (issued in two parts) consists of the summary records of the proceedings of the Commission. Part I of Volume I (135 printed pages) provides the summary records for twenty-two meetings (3-28 January 1966). Part II of Volume I (350 pages) provides the summary records for fifty meetings (4 May-19 July 1966). Nearly all of these meetings were devoted to the intensive examination and redrafting of proposed articles on the law of treaties.

12. Documents produced in 1966 are reported in Volume II, which is 367 pages in length. This volume includes (inter alia) the following significant items: Reports of the Commission (the body of this report includes the text and commentary of draft articles on the law of treaties, and appends the comments by Governments on the draft articles); reports of Special Rapporteurs proposing and explaining draft articles; memoranda by the Secretariat. On the other hand, many of the documents presented to the Commission were not reproduced; access to these documents is facilitated by references in a Check List of Documents.

Yearbook of UNIDROIT

13. The Yearbooks of the International Institute for the Unification of Private Law (UNIDROIT) reflect its activity. They include information on the organization of the Institute (membership in the Institute and its Assembly and Governing Council), a narrative account of the sessions of the Governing Council and the scientific activity of the Institute, including accounts of developments, such as diplomatic conferences, drafting sessions and accessions with respect to legal texts prepared or instituted by UNIDROIT. The Yearbooks also include the texts of any uniform laws prepared during the year in question. The Yearbooks of UNIDROIT are supplemented by the separate publications of Uniform Law Cases - the reports and summaries of decisions in national courts construing various uniform laws.

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III. THE PURPOSES OF A YEARBOOK OF THE UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW

14. General Assembly resolution 2421 (XXIII) referred to the use of a Yearbook to make the Commission's work "more widely known and more readily available." In considering the significance of making the Commission's work known, it should be noted that performance of the General Assembly's mandate, to promote the progressive harmonization and unification of the law of international trade, depends in large measure on voluntary co-operation with the Commission's work by Governments and by organizations.

15. Under the terms of the resolution of the General Assembly establishing the Commission (resolution 2205 (XXI), para. 8), the Commission should, inter alia, promote the harmonization and unification of the law of international trade by "(a) co-ordinating the work of organizations active in the field and encouraging co-operation among them" and by "(b) promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws". These activities call for widespread understanding and appreciation of the Commission's work. The same is true of the General Assembly's further mandate to prepare or promote the adoption of new international conventions and laws and to promote the codification and wider acceptance of international trade terms and customs. Knowledge of the Commission's work and appreciation for the thoroughness of the preparation that leads to its recommendations are essential to achieve the aims of the Commission.

16. If unification of the law of international trade is to move effectively towards the world-wide goal envisaged by the General Assembly, the Commission's activities must become known far beyond the Commission's membership and must reach all Governments, and also scholars, attorneys, mercantile associations and others who could contribute to the acceptance of the Commission's work by Governments and by bodies engaged in international trade.

17. A Yearbook would serve a further function with respect to new conventions and other international instruments which the Commission may prepare. In evaluating and interpreting such instruments it will be useful to consult the studies and working papers from which the legal texts emerged; the experience of the International Law Commission suggests that the most effective way to make these materials available is through a Yearbook.

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IV. ALTERNATIVE FORMS OF A YEARBOOK

18. The various purposes described above need to be borne in mind in deciding on the contents of the Yearbook. In accordance with the request by the Commission, the Secretary-General submits proposals for alternative forms of a Yearbook. Two alternatives are set forth in Annex I to this Report. In Annex II are estimates of the financial implications for each alternative and an indication of the revenue from sales which might be expected.

19. Both proposals (designated as Alternatives A and B) use the same basic approach in reproducing the reports of the Commission, and the principal documents considered by the Commission. The documentary material is organized in terms of the major subjects of the Commission's work; documents on each subject are accompanied by references to other relevant documents and materials on the same subject. Alternative A, however, is more restricted in scope in two respects. In the first place, whereas Alternative B calls for the inclusion of the summary records of the Commission, Alternative A does not propose the printing of the summary records in the initial publication covering the first years of the Commission's activity. Dissemination of summary records by means of the Yearbook (comparable to that provided by the International Law Commission) will acquire a special significance as travaux préparatoires when UNCITRAL undertakes the detailed examination of proposed legal texts; this stage however had not been reached in the first two sessions of the Commission, which were primarily concerned with decisions on the direction of the future work of the Commission. Alternative A, in omitting the summary records for these first two sessions, does not indicate any opinion concerning the inclusion of all (or parts) of the summary records for future sessions when proposed legal texts are discussed by the Commission.

20. Alternative A also follows a rather restricted approach concerning the reproduction of documents. One question arises with respect to studies and suggestions by Governments and organizations which are summarized in separate reports by the Secretary-General.^{3/} Publishing in the Yearbook the full text of

^{3/} See, e.g. document A/CN.9/4/Add.1 containing an analysis of comments by Governments and organizations on the work programme of the Commission; and document A/CN.9/17 containing an analysis of replies and studies by Governments on The Hague Conventions of 1964.

those studies plus the summary would involve duplication, especially when different Governments and organizations develop substantially the same position on a given issue. Alternative A in such cases proposes the inclusion only of the Report by the Secretary-General. These reports, however, give specific references to the documents which are summarized; consequently, one who wishes to make an intensive study of all the documentation should be able to secure the underlying documents from the Secretariat, and measures are being taken to increase the availability of such documents. Alternative B, in the interest of completeness, would reproduce both the studies by Governments and organizations and the summaries made by the Secretary-General.

21. The adoption of Alternative A with respect to the initial Yearbooks would not preclude the reproduction in subsequent Yearbooks of a larger selection of underlying studies and reports. When proposed legal texts are in the process of development, technical studies by Governments may need to be included in the Yearbook. Decisions on these questions will need to be taken in the light of the specific problem at hand.

22. Under both Alternatives A and B, certain documents, of a preliminary character or not of continuing interest, have been omitted. However, in any case the Yearbook would include a complete descriptive table of documents which come before the Commission; as was mentioned above, steps are being taken to assure that all significant documents will be available.

23. Certain practical considerations need to be mentioned with respect to the time for commencing publication. If the first issue is postponed too long, Yearbooks covering several years must be produced at the same time; as a consequence, a heavy load probably will be cast on the Secretariat at a time when it faces the mounting burden of new projects placed before the Commission. In the interest of efficiency, therefore, it would be desirable to commence publication of the Yearbook as soon as possible. In any case, final decisions on the timing and content cannot be reached until the third session of the Commission. In view of this fact, the advisability of publishing yearbooks covering the work of the first three sessions in one volume would be considered at the appropriate time.

ANNEX I

OUTLINE OF CONTENTS OF A YEARBOOK OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Alternative A

Pages*

I. HISTORY: CREATION OF UNCITRAL

1. Historical note (with references to relevant United Nations documents) on the initial steps leading towards the establishment of the Commission 3
2. Progressive development of the law of international trade: Report of the Secretary-General (A/6396) (including Annexes I and II) 90
3. General Assembly, Twenty-First Session:
Report of the Sixth Committee (A/6594);
Resolution 2205 adopted by the General Assembly:
Establishment of the United Nations Commission on International Trade Law 6

II. PROCEEDINGS OF THE COMMISSION

A. The First Session

1. Report of the Commission (A/7216) including Annex I 40
2. Comments by the Trade and Development Board (A/7214, part two, chapter VII) 3
3. Report of the Sixth Committee (A/7408) 11
4. General Assembly resolution 2421 (XXIII) 2
5. References to other relevant documents (including the summary records) 2

* The references are to pages of typing. The printed equivalent would comprise about one-third the length indicated for typing. (E.g. item I-2 (A/6396), as printed in the Official Records of the General Assembly, is 30 pages in length).

B.	<u>The Second Session</u>	<u>Pages</u>
1.	Report of the Commission (A/7618) (including Annexes III-V)	81
2.	Relevant excerpts from and references to action by the Trade and Development Board and the General Assembly with respect to the UNCITRAL report (estimate)	6
3.	References to other relevant documents (including summary records)	2

III. DOCUMENTS AND MATERIALS ON SPECIFIC SUBJECTS

A.	<u>The Work Programme</u>	
1.	Analysis of comments submitted by Governments and organizations (A/CN.9/4/Add.1)	20
2.	Survey of activities of organizations concerned with the harmonization and unification of the law of international trade (A/CN.9/5)	15
3.	Organization and methods of work; Note by the Secretary-General (A/CN.9/6)	10
4.	References to relevant documents	1
B.	<u>International Sale of Goods</u>	
1.	<u>The Hague Conventions of 1964 and annexed uniform laws</u>	
(a)	Analysis of the replies and studies received from Governments: Report of the Secretary-General . . .	34
(b)	References to other relevant documents	1
2.	<u>The Hague Convention of 1955 on the Law Applicable to International Sale of Goods</u>	
(a)	References to relevant documents*	1

* Analyses and studies presented for the first two sessions of the Commission have been enlarged for consideration during the third session. To avoid duplication, it is proposed that only the later, expanded documents be reproduced for the Yearbook.

3.	<u>Time-Limits and Limitations (Prescription) in the Field of the International Sale of Goods</u>	<u>Pages</u>
	(a) References to relevant documents*	1
4.	<u>General Conditions of Sale and Standard Contracts, Incoterms and other Trade Terms</u>	
	(a) General Conditions of Sale and Standard Contracts: Report of the Secretary-General (A/CN.9/18) (excluding Annexes giving replies of organs and organizations)	13
	(b) References to relevant documents	1
C.	<u>International Payments</u>	
1.	Negotiable Instruments: Note by the Secretary-General and Report by the International Institute for the Unification of Private Law (UNIDROIT) (A/CN.9/19)	11
2.	Preliminary Study of Guarantees and Securities as related to International Payments: Report of the Secretary-General (A/CN.9/20, Add.1)	31
3.	References to relevant documents	1
D.	<u>International Commercial Arbitration</u>	
1.	Report of the Secretary-General (A/CN.9/21 and Corr.1)	70
2.	References to relevant documents	1
E.	<u>Training and Assistance in the Field of International Trade Law</u>	
1.	Report of the Secretary-General (A/CN.9/27)	10

* Analyses and studies presented for the first two sessions of the Commission have been enlarged for consideration during the third session. To avoid duplication, it is proposed that only the later, expanded documents be reproduced for the Yearbook.

	<u>Pages</u>
IV. DESCRIPTIVE TABLE OF DOCUMENTS	
(Including listings of drafts, working papers and preliminary documents not included in the Yearbook)	6
V. BIBLIOGRAPHY ON UNCITRAL	5

Alternative B

[Items omitted from the proposal under Alternative A that might be included in a Yearbook of wider inclusiveness/

	<u>Pages</u>
II. PROCEEDINGS OF THE COMMISSION	
A. <u>The First Session</u>	
Summary records of the proceedings	250
B. <u>The Second Session</u>	
Summary records of the proceedings	227
III. DOCUMENTATION AND RELATED MATERIALS ON SPECIFIC SUBJECTS	
A. <u>The work programme</u>	
1. Comments by Member States, organs and organizations on the Work Programme of the Commission (A/CN.9/4 and Corr.1 and Add.2)	123
2. Programme of work until the end of 1972: proposal by the French delegation (A/CN.9/L.7)	6
B. <u>International sale of goods</u>	
1. The Hague Conventions of 1964 and annexed uniform laws	
(a) Replies and studies by States concerning the Hague Conventions of 1964 (A/CN.9/11, Add.1, 2, 3, 4, 5 and 6)	115
(b) Proposal by the USSR concerning the unification of rules of law regulating the international sale of goods (A/CN.9/L.9)	3

2. The Hague Convention of 1955 on the law
applicable to the International Sale of Goods

Pages

Replies by States (A/CN.9/12, Add.1, 2, 3 and 4) 34

3. Time-limits and limitations (prescription) in
the field of International Sale of Goods

Studies submitted by Governments (A/CN.9/16,
Add.1, 2, 3 and 4) 98

4. General Conditions of Sale and Standard Contracts,
Incoterms and other trade terms

(a) General conditions of sale: replies of
organs and organizations in Annex II to
A/CN.9/18 22

(b) Promoting the wider use and acceptance by
Incoterms: report by the International Chamber
of Commerce (A/CN.9/14) 7

(c) Proposal by the United States for means to
further the use of general conditions, standard
contracts and uniform trade terms as aids to
uniformity (A/CN.9/L.8) 10

C. International Payments

Bankers' Commercial Credits: study submitted by the
International Chamber of Commerce (A/CN.9/15 and Add.1)
(Summary of comments by other organizations) 9

ANNEX II

FINANCIAL IMPLICATIONS OF ALTERNATIVE PROPOSALS FOR YEARBOOK COVERING THE FIRST TWO SESSIONS OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Estimates of Size and Cost

	<u>Typed Pages</u>	<u>Printed Pages</u>	<u>Cost of printing official copies</u>				
			<u>English</u>	<u>French</u>	<u>Spanish</u>	<u>Russian</u>	<u>Total</u>
		No. of copies*					
Alternative A	485	162	3,000 \$5,500	1,000 \$4,200	500 \$3,700	100 \$2,700	\$16,100
Alternative B (485 + 904)	1,389	463	\$15,500	\$11,800	\$10,500	\$7,400	\$45,200

Estimates of possible gross revenue from sales

Alternative A: 850 copies at Sales Price of \$2.50:	\$2,125
Alternative B: 800 copies at Sales Price of \$6.00:	\$4,800

* The projected number of copies follows the pattern established with respect to the Yearbook of the International Law Commission which, however, has appeared only in English, French and Spanish.