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COMMENTS BY MEMBER STATES, ORGANS AND ORGANIZATIONS ON THE WORK PROGRAMME OF THE COMMISSION

Note by the Secretary-General

67-24648

(120 p.)

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I. INTRODUCTION

1. The General Assembly, in paragraph 1 of section III of resolution 2205 (XXI), establishing the United Nations Commission on International Trade Law, requested the Secretary-General to invite Member States and the organs and organizations concerned to submit in writing, taking into account in particular the report of the Secretary-General,[1/] comments on a programme of work to be undertaken by the Commission in discharging its functions.

2. Pursuant to this request, on 13 February 1967 the Secretary-General addressed a note verbale to all Member States inviting them to submit any comments and suggestions which might be helpful to the Commission in carrying out its mandate. The note verbale stated that the Commission would be expected to devote its attention at an early stage to the selection of topics for harmonization and unification and to the order or priority in the work programme. The Secretary-General expressed his confidence that any comments and suggestions of Member States concerning topics and priorities would be of particular value to the Commission in considering the organization of its work.

3. A similar invitation was addressed on 13 March 1967 to the organs and organizations listed in annex I. It was recalled therein that in paragraph 10 of the Secretary-General's report the expression "law of international trade" was defined as the body of rules governing commercial relationships of a private law nature involving different countries. It was also indicated that the following are examples of topics falling within the scope of the law of international trade:

(a) International sale of goods:
  (i) Formation of contracts;
  (ii) Agency arrangements;
  (iii) Exclusive sale arrangements.

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

(b) Negotiable instruments and banker's commercial credits;

(c) Laws relating to conduct of business activities pertaining to international trade;

(d) Insurance;

(e) Transportation:

(i) Carriage of goods by sea;

(ii) Carriage of goods by air;

(iii) Carriage of goods by road and rail;

(iv) Carriage of goods by inland waterways.

(f) Industrial property and copyright;

(g) Commercial arbitration.

4. In reply to the aforementioned communications the following Member States, organs and organizations submitted comments and suggestiong relating to the work programme of the Commission:

A. Member States

1. Afghanistan
2. Australia
3. Austria
4. Belgium
5. Bulgaria
6. Cambodia
7. Ceylon
8. China
9. Czechoslovakia
10. nmark
11. Finland
12. Guatemala
13. Hungary
14. Israel
15. Italy
16. Japan
17. Laos
18. Malta
19. Mauritania
20. Netherlands
21. Pakistan
22. Poland
23. Romania
24. Singapore
25. Sweden
26. Union of Soviet Socialist Republics
27. United Kingdom
28. United States of America
29. Yugoslavia

B. United Nations organs

1. Economic Commission for Asia and the Far East
2. Economic Commission for Europe
3. United Nations Conference on Trade and Development.

C. Inter-governmental organizations

1. Central Office for International Railway Transport
2. Council of Europe
3. European Economic Community
4. Hague Conference on Private International Law, The
5. International Institute for the Unification of Private Law
6. Organization for Economic Co-operation and Development
7. Organization of American States
8. United International Bureaux for the Protection of Intellectual Property.

D. Non-governmental organizations in consultative status with the Economic and Social Council

Category A

1. International Chamber of Commerce

Category B

1. Afro-Asian Organization for Economic Co-operation
2. European Insurance Committee
3. International Association for the Protection of Industrial Property
4. International Law Association
5. International Union for Inland Navigation.

Register

1. International Chamber of Shipping.

E. Other non-governmental organizations

1. Inter-American Institute of International Legal Studies
2. International Rail Transport Committee
3. Law Association for Asia and the Western Pacific.

5. In addition, some organizations (Customs Co-operation Council, Food and Agriculture Organization, Institute of International Law, International Association of Legal Science, International Civil Aviation Organization, Inter-Governmental Maritime Consultative Organization) described their own activities without submitting comments on the work programme of the Commission. The relevant information furnished by these organizations, while not reproduced herein, will be included in another document (A/CN.9/5) dealing with the activities of organizations concerned with the harmonization and unification of the law of international trade.

6. Other organizations (Bank for International Settlements, General Agreement on Tariffs and Trade, International Air Transport Association, International Bank for Reconstruction and Development, International Juridical Organization for Developing Countries, International Labour Organisation) did not make substantive comments relating to the work programme, but welcomed the establishment of the Commission and expressed their readiness to collaborate with it in the progressive harmonization and unification of international trade law.

7. The text of the comments and suggestions relating to the work programme of the Commission, submitted by the Member States, organs and organizations enumerated in paragraph 4 above, is reproduced in chapters II and III.

II. COMMENTS SUBMITTED BY MEMBER STATES

AFGHANISTAN

[Original: English]

The Royal Government of Afghanistan recognizes the importance of an organized programme of activity focused on the progressive development, and especially the harmonization, of the laws, legal rules, legal forms and practices governing international trade. The realization of the objectives of such a programme could be of real benefit to developing countries, especially in connexion with their efforts to increase trade both among themselves and with developed markets.

In respect to the question of topics and priorities on which the Secretary-General has indicated that comments and suggestions would be of particular value, the Royal Government of Afghanistan would like to invite attention to the potential value to developing countries of three areas of activity by the recently established United Nations Commission on International Trade Law:

First: The Commission might evaluate, select and distribute to member countries the texts of laws, contracts and other legal forms, relating to or governing international trade which could serve effectively as reference material for consideration and guidance in connexion with the formulation and enactment of laws concerning international trade or the revision of existing laws and regulations.

Second: The Commission might solicit the co-operation of the International Institute for the Unification of Private Law (Rome), the International Chamber of Commerce, the Hague Conference on Private International Law and other similar organizations, in making available to member countries some of the most pertinent results of their work in the field of co-ordination of laws relating to international trade.

Third: The Commission might consider the possibility of establishing a legal reference centre for commercial law for the purpose of providing a reference service and, perhaps at a somewhat later stage, a legal drafting advisory service to member Governments.

The Royal Government of Afghanistan would like to emphasize certain considerations on which General Assembly resolution 2205 (XXI) was based, namely, that it is desirable that the process of harmonization and unification of the laws of international trade should be co-ordinated, systemized and accelerated, and that broad participation should be secured in furthering progress in this area. To this end, according to paragraphs 11 and 12 of General Assembly resolution 2205 (XXI), the Commission should establish the necessary close working relationships with the already existing organizations in this field with the purpose of promoting an active collaboration, a maximum of co-ordination and a minimum of duplication of efforts and activities.

AUSTRALIA

[Original: English]

The Australian Government wishes firstly to express its agreement with the comment in paragraph 223 of the Secretary-General's report (United Nations document A/6396) that there is no merit in formulating a convention or uniform law on a subject which would not appreciably benefit international trade. It is considered that the Commission should not engage in the examination of particular problems with the view to harmonization or unification of the law simply for the purpose of harmony or unity. Instead, the Commission should devote its attention to matters where the absence of uniformly applicable rules is plainly inhibiting the development of trade.

In the light of this, it is considered that the Commission should concentrate upon co-ordinating the work of organizations already active in the field and encouraging co-operation among them. In this connexion it is important that the establishment of the Commission, which was aimed at overcoming any deficiencies of co-ordination and co-operation among existing organizations, should not itself result in duplication of activities already being performed elsewhere.

The Commission could also perform a valuable function in collecting and disseminating information on modern legal developments (including case law) in the field of the law of international trade. In undertaking this function the Commission should not limit itself to developments that have attained legal status by way of conventions, national legislation or judicial decisions, and the Commission should include information on emergent proposals for legal change and development.

Concerning particular topics for study, Australia considers that the Committee could play a most important role if it could help bring about unification and wide adoption of rules and legal provisions relating to the international movement of goods by the container method of transportation.

The container system of shipping goods has introduced a number of fundamental changes into shipping and into cargo handling. Stevedoring and general cargo handling have been speeded up because containers loaded with cargo are able to be packed and unpacked away from the wharf. This has enabled the loading and unloading

of ships to be achieved much more rapidly and on the routes where the system has been introduced freight rate increases have been minimized. However, the fact that containers are loaded and unloaded away from the wharf has meant that whereas previously shipping companies regarded themselves merely as maritime carriers, they now see the shipping aspect of their operations as only one part of a total transport system.

Services of this kind are already operating between North and Central America, between North America and Europe and between the West Coast of North America and Hawaii, in advance of any international agreement about changes in documentation needed for the new system. Australia's trade is to be served by container services, the first of which is expected to be operating by January 1969.

There are, therefore, strong indications that container services will be operating on a world-wide basis by the early 1970's. It seems also clear that the system offers very good prospects for the expansion of international trade. However, preliminary indications suggest that there could be many problems associated with the movement of goods in this fashion before an uninterrupted flow of goods from manufacturer to end user can be achieved. The likelihood is that documentation presently used for conventional shipping services could require drastic modification. This is substantiated by the number of international groups which have decided to interest themselves in this subject. In addition, the container shipping concept will necessitate the adoption on a wider basis than at present of a uniform code of rules relating to the packaging and stowage of dangerous goods and the formulation and adoption of international standards for structure, testing, certification and periodic inspection of containers.

Accordingly, it is suggested that the Commission might undertake the following work relating to container transportation systems -

(1) Maintain contact with other organizations considering maritime documentation, codification of international practices or harmonization of national laws as affecting container transport systems.

(2) Make known the findings of such organizations to member States.

(3) Determine from an examination of the matters referred to above any areas in which study or consideration is deficient and either -

(a) Arrange with an existing organization for a study of the question; or

(b) If this is not possible have a study made within the Commission.

AUSTRIA

[Original: English]

Point 8 (section II) of the resolution, lists eight possibilities for UNCITRAL to fulfil its functions. Excepting the methods mentioned under (b) and (c), these are functions of co-ordination, information and co-operation with other organizations, partly within and partly outside the United Nations. In the opinion of the Austrian Government it is not at present absolutely necessary to submit any proposals on these items.

Items (b) and (c), however, are of special interest, especially as regards the unification of international trade law by means of multilateral agreements. Here, the Austrian Government believes that there are theoretically the following possibilities:

1. Extending the application of existing instruments to new geographical areas.

2. Adapting existing instruments so as to make them acceptable to a larger number of States.

3. Working out new treaties on the basis of existing drafts or on the basis of preparatory work already done.

4. Working out new instruments in legal fields where preparatory work has not been done even on a regional level.

The Austrian Government feels that the possibilities 1, 2 and 3 should be the first to be envisaged. Existing regional, and especially European, conventions and draft conventions should be examined with a view to ascertaining for which one of the three methods they be suitable. Item 4, the consideration within the United Nations of entirely new legal matters, should be postponed.

On the basis of the enumeration of legal matters falling within the purview of international trade law given by the head of UNO's legal department in his circular of 13 March 1967, the following picture emerges:

(a) International sale of goods:

It would be necessary first to ascertain whether or not the two Conventions on the international sale of goods concluded at The Hague in 1967 will have entered into force by 1 April 1968. Under the Final Act of the Diplomatic

Conference on the International Sale of Goods held at The Hague, the International Institute for the Unification of Private Law in Rome is to start work on that date either for the amendment of the Conventions, if they have entered into force, or for another diplomatic conference, whose purpose it would be to conclude conventions with a different content. In these activities, UNCITRAL should take part in terms of assistance and co-ordination. It must not be overlooked that the Rome Institute is also working on another four draft conventions likewise destined to supplement on an international level the two Hague Conventions on the international sale of goods. (These four drafts concern the conditions of validity of contracts for the international sale of goods, the contract of commission on the international sale or purchase of goods, and agency in private law relations.)

(b) Negotiable instruments and banker's commercial credits:

It does not seem advisable to take any action affecting the Geneva Convention Providing a Uniform Law on Cheques or the Geneva Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes, which have been adopted by numerous States.

Within the framework of the Council of Europe, a Convention Concerning Lost or Stolen Bearer Securities is being prepared; it is to facilitate the recovery of such securities, and will simultaneously lay down the rights and duties of professional intermediaries (especially, of course, banks). It should be examined whether such regulations would be purposeful and acceptable within the wider framework of the United Nations.

(c) Laws relating to the conduct of business activities pertaining to international trade:

The International League of Commercial Travellers and Agents (whose headquarters is in Vienna) has prepared a draft Uniform Law for Commercial Travellers which might be examined within the framework of the Commission, although only a few relevant professional organizations in Europe are members of the above-mentioned League.

(d) Insurance:

The Austrian Government does not know of any conventions or draft conventions in this field.

(e) Transportation:

Maritime law is taken care of on a world-wide level by the International Maritime Committee and by the Brussels Diplomatic Conference on Maritime Law. A similar role is played by IATA and ICAO in the field of air law. Here, the Commission might confine its activities to recommending the acceptance of existing agreements.

In the field of road transport, the extension of the Convention of 19 May 1956, on the Contract for the International Carriage of Goods by Road (CMR), at present applicable only to European States, should be promoted. Likewise, CIM, the international convention on the transport of goods by railway, concluded on 25 February 1961, is at present only applicable to European countries and a few States in the Middle East and North Africa. Its extension to other parts of the world would be desirable.

Within the framework of the United Nations Economic Commission for Europe, a draft Convention on the Contract on the Carriage of Goods by Inland Navigation has been prepared. Since even on this level agreement has not been reached on various essential points, and in view of the fact that this type of transport is probably only of regional significance, any deeper involvement of the Commission would hardly seem advisable.

The International Institute for the Unification of Private Law (Unidroit) has prepared draft conventions on the international forwarding contract and on the contract for the international combined carriage of goods. As regards the first-mentioned draft, a diplomatic conference may be held in Vienna, and this could be supported by the United Nations. As regards the draft on the international combined carriage of goods, which would be of great importance for the legal position of carriers, the function of the Commission would be one of co-ordination, since a number of international organizations have already declared that they are interested in such regulations, especially for the transport of containers.

(f) Industrial property and copyright:

In this field, the activities of the international organizations now dealing with these matters are probably sufficient.

(g) Commercial arbitration:

First, UNCITRAL should try to bring about the widest possible acceptance of the United Nations Convention on the Recognition and Enforcement of Arbitral Awards

of 10 June 1958. Then, it should be examined whether the rules laid down in the European Convention on International Commercial Arbitration of 21 April 1961 might also be applied to international arbitration in other parts of the world - if necessary in a modified form. The Arbitration Rules of the United Nations Economic Commission for Europe might be recommended to business people outside continental Europe for inclusion in their contracts.

In addition to the matters enumerated by the head of the legal department of the United Nations, the following items may be mentioned:

(h) Company law:

Within the Council of Europe a European Convention on the Establishment of Companies is being prepared.

(i) Tourism:

Although this does not concern international exchanges of goods it is a very important economic factor not only nationally but also internationally.

UNCITRAL might examine the possibilities of extending to extra-European territories the application of the Council of Europe Convention of 17 December 1962, on the liability of hotel-keeepers concerning the property of their guests, and might also follow the work of Unidroit on the legal status of travel agencies.

BELGIUM

[Original: French]

The Belgian Government's observations fall into two parts. They concern, on the one hand, the working methods which the Commission might adopt in carrying out the tasks entrusted to it by the Assembly resolution and, on the other hand, the subjects to which the Commission might more particularly give its attention.

I. Working methods

The Commission has been given such a wide mandate that in the opinion of the Belgian Government it should, at its first meetings, make a thorough study of the methods most likely to make its work as effective as possible.

The Commission's first task might accordingly be to decide what branches of activity are included in the notion of international trade law.

While able to accept the definition given in the report (paragraph 10), according to which the expression would mean "the body of rules governing commercial relationships of a private law nature involving different countries", the Belgian Government thinks that certain sectors might perhaps be added to those mentioned, as examples, in the Secretary-General's report (paragraphs 10 and 184).

These might include international tourism, owing to its steady growth, and companies. As regards the second subject, the Hague Convention of 1 June 1956, for example, on the Recognition of the Legal Personality of Foreign Companies, Associations and Foundations is of undoubted interest from the point of view of international trade.

The idea of international trade having been defined, it would probably be advisable to draw up, for each sector of activity, a list of the conventions in force, the conventions already drafted but not yet in force, and drafts in course of preparation by intergovernmental or non-governmental organizations.

In that context, and to enable the Commission to consider, among other things, what measures might be likely to promote wide participation in existing international conventions (part II, paragraph 8 (b) of the resolution), the accession clauses to these conventions should be mentioned.

Such a list, by providing Members with full information, would undoubtedly facilitate the Commission's task so far as the preparation of new conventions is concerned. That task could thus be carried out, as stated in the resolution, "in collaboration, where appropriate, with the organizations operating in this field". On this point also, the Belgian Government entirely endorses the view expressed in the report (paragraph 218) that an active United Nations participation in this work would tend to broaden the scope and enhance the activities of agencies at present dealing with trade law.

In preparing new conventions, the Commission should, wherever possible, seek the help of existing organizations, both intergovernmental, such as the International Institute for the Unification of Private Law, and non-governmental, such as the International Maritime Committee, which have already largely contributed to the development of international trade law.

It should be noted in this connexion that the General Assembly has expressed its satisfaction with the efforts already made, including those made by the non-governmental organizations, and that the main aim of the resolution is to co-ordinate, systematize and accelerate the process of harmonization and unification of the law of international trade and secure a broader participation in furthering progress in that area.

The Commission should therefore establish as close a co-operation as possible with the various competent organizations so as to make its work fully effective and achieve the necessary co-ordination between its activities and those of the said organizations.

II. Subjects to be dealt with and order of priority

The Government considers it premature, at this stage, to present precise proposals regarding the subjects which could be studied in the Commission. In case, however, the Commission considers it has reached the stage where it can decide on these matters, the Belgian Government suggests that it should prepare new uniform laws on bills of exchange, promissory notes and cheques, since many States have not yet found it possible to adopt the Geneva Conventions.

It also considers that it would be very useful to continue the study of the clauses most often used in turn-key contracts.

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BULGARIA

[Original: French]

In view of the important part which could be played by the United Nations Commission on International Trade Law in the elimination of restrictive and discriminatory measures in international trade, and in the expansion of foreign trade, the Government of the People's Republic of Bulgaria presents the following observations with a view to enabling the Commission better to perform its tasks in the spirit of resolution 2205 (XXI). In particular, the Bulgarian Government is of the opinion that the Commission should

(1) include in its work a study of the multilateral international Conventions in force relating to regulation of international sale with a view to the extension of the field of the application of those conventions and the improvement of legal rules on that subject;

(2) study the most important standard contracts and general conditions of delivery drawn up by various trade centres throughout the world, as well as by the United Nations Economic Commission for Europe and other agencies, with a view to the harmonization, improvement and unification of international rules in that field;

(3) study the problem of long-term credit and of deliveries made on long-term credit with a view to the intensification of international trade by the establishment of adequate legal rules;

(4) include in its work a study, at the comparative level, of the legislation of different countries on liability for defects and for non-delivery of the agreed quantity and quality, so that draft co-ordinated regulations can be prepared.

CAMBODIA

/Original: French/

The United Nations Commission on International Trade Law might usefully deal, in the early stages of its work, with the unification of those technical branches of trade law in which considerable harmonization efforts have already been made, i.e.:

(1) the law governing international sale of goods and certain definitions of frequently used commercial terms;

(2) the law applicable to negotiable instruments and banker's commercial credits;

(3) the legal protection of industrial property and copywright;

(4) the law of international arbitration;

(5) the regulation of goods transport by sea, air and land.

As regards subjects essential to the development of world trade codification of which at the international level is advanced, and as regards other subjects very important in international relations, such as insurance of transported goods and the general law of contracts for international commercial transactions, the Royal Cambodian Government considers that the method of working out an international system for the progressive harmonization of municipal law seems preferable to concentrating exclusively on the resolution of conflicts of laws resulting from divergencies between the legislation of different countries. In such matters the Commission could take the already existing texts and use them as a basis for preparing draft international conventions to which the States Members of the United Nations would be invited to declare their accession.

As regards less essential subjects, on the other hand, and in those branches of commercial law in which national regulations are too fundamentally opposed, the Commission could direct its efforts towards the determination of the rules applicable in international law for the settlement of conflicts of laws (law of conflicts, competent jurisdiction).

CEYLON

[Original: English]

In the opinion of the Government of Ceylon the following topics deserve the attention of the United Nations Commission on International Trade Law:

1. International sale of goods;
2. Negotiable instruments, such as bills of exchange etc.;
3. Carriage of goods by sea, land and air;
4. Commercial arbitration;
5. Principles for avoidance of double taxation;
6. Service of process, proof and production of documents and the reciprocal enforcement of judgements in cases relating to commercial matters;
7. Insurance of exports;
8. Import and export licences and exchange control;
9. Survey of goods;
10. Banker's credits and shipping documents;
11. International production of intellectual and industrial property;
12. Commercial frustration.

CHINA

/Original: English/

The Chinese Government is in general agreement with the object of the said Commission and will support its effort in promoting the progressive harmonization and unification of the law of international trade.

In view of the diversities of trade policies, social structures and political backgrounds in the world today, the Commission, at the initial stage, may wish to concentrate its work on a realistic appraisal of the feasibility of such an undertaking, with a view to achieving fruitful results. A good starting point may be to adopt a regional approach, seeking first of all common grounds for harmonization and unification within countries of each region undergoing similar stages of development. Such a regional approach may in time be expanded to interregional co-ordination which, if attainable, may eventually pave the way for global harmonization and unification.

As to the selection of topics in the work programme of the Commission, the following topics, listed in their order of priority, are suggested:

1. Commercial Arbitration;
2. International Protection of Industrial Properties;
3. Bill of Exchange;
4. Bankers' Commercial Credits;
5. International Sale of Goods;
6. International Transportation of Goods;
7. Supply and Erection of Plant and Machinery Abroad;
8. Agency;
9. Force-Majeure, and
10. Prescription and Time-Limit.

The Chinese Government agrees with the view expressed in the Secretary-General's report (A/6396) that there is no merit in formulating a convention or uniform law on a subject which would not appreciably benefit international trade. It is therefore essential that a thorough study should first be made of the existing laws, bilateral and multilateral agreements and arrangements having a bearing on international trade.

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CZECHOSLOVAKIA

[Original: English]

The resolution rightly points to the fact that the progress in the area of unification and harmonization of International Trade Law has not been commensurate with the importance and urgency of these questions aimed at removing legal obstacles in the interest of the development of world trade and economic co-operation among States especially due to an insufficient co-ordination and co-operation between the existing institutions and organs. The Commission set up on the basis of this resolution whose activity will fully correspond to Article 1, paragraph 3 and 4 and to Article 13 of the United Nations Charter may, in the opinion of the Czechoslovak authorities significantly contribute to an improvement of the existing state of affairs.

The Czechoslovak authorities fully agree to the opinion expressed in the report of the Secretary-General (A/6396) according to which a thorough selection of the topics the solution of which would be advantageous for international trade and in the case of which there is a realistic possibility of achieving positive results should precede the work of unification.

In the opinion of the Czechoslovak authorities the Commission should focus its activity on the gradual solution especially of these questions in the field of international trade relations which have their own special legal problems:

I

The Form and the Way of Concluding Contracts

The solution of legal effects of the proposal on the conclusion of a contract and the stipulation of conditions for its adoption, the stipulation of prerequisites of the contract, the conditions of the validity of legal acts, might be discussed.

The responsibility for the non-fulfilment of contractual obligations and the consequences resulting from an infringement of an obligation, especially in connexion with the contract purchase.

This includes especially the liability to pay an indemnity, the consideration whether the solution of partial measures should be based on the principle of culpability or on the principle of objective responsibility, the problems of the definition of the concept of vis major and its significance, the forbearance money, the transfer of the risk of damage upon things in case of delay, the modification of the possibility of withdrawing from a contract, etc.

The influence of State interventions on the obligations of the parties resulting from trade operations.

It seems desirable to examine primarily the influence of licence, foreign exchange and other restrictions on the existence of obligations and on the duty to pay the damage.

Representation and full power

It would be suitable to discuss primarily the distinction of internal relations between the representative and the represented from the external relations to the third persons and the question of the maximum possible protection of the persons against whom the representative frauded on the powers or acted without powers.

Limitation

The determination of the time of duration and the course of the periods of limitation as well as the legal consequences resulting from their expiration should be discussed. The solution of this question is important also with respect to the different interpretations of the institution of limitation in the Continental and in the Anglo-Saxon Laws.

Transfer of title

The regulation of the reservation of proprietary rights appears practical, especially with regard to the fact that the real and legal character is solved according to the Law of the State on the territory of which the thing is found and the conditions for the rise of the reservation of proprietary rights vary in different legal systems.

Compensation of claims

It would be especially necessary to overcome the difference between the Anglo-Saxon interpretation of the compensation as of a question of adjective law and the Continental interpretation which regards the setting off as a substantive provision.

Insurance Law

It would be suitable to discuss the regulation of insurance of risks from the transport and from the granting of credits and the definition of the legal character of the insurance policy should especially be of practical importance.

II

The Commission should simultaneously pay attention, in the opinion of the Czechoslovak authorities, to the spheres of International Trade Law where the unification has already achieved certain results. It would be useful to discuss these questions aimed at attaining the universal regulation.

It includes especially the Convention on the Law applicable to International Sales of Corporeal Movables, the Convention on the Law applicable for the Transfer of Property in International Sales of Corporeal Movables and the Convention relating to a Uniform Law on the Contract of Commission on the International Sale or Purchase of Goods, then also some Conventions in the sphere of Transport Law and the Conventions in the sphere of Intellectual Property. In the sphere of the Law relating to the Bills of Exchange and of Cheques, it appears useful to discuss primarily the overcoming of differences between the Continental and Anglo-Saxon legal regulation.

It would be useful to strive for unifying the questions which are specified in a non-governmental form (especially INCOTERMS and the clauses used therein, usages for documentary letters of credit and banking collection) and to consider whether it would not be useful to adapt them in the form of an international convention.

The Czechoslovak authorities are aware of the fact that a complete unification of the substantive International Trade Law will be a complicated process and that the conflicts law rules will maintain their great importance.

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They therefore recommend that the Commission should also consider the unification of the conflicts law rules especially in the spheres where no positive results of the uniform regulation of substantive norms can be expected within short.

In the opinion of the Czechoslovak authorities some questions related to International Trade Law could also be, at least temporarily, solved in the form of model laws.

As to the determination of priorities of the programme of the Commission, its organization and the form of co-operation of the Commission with other institutions, it will be most useful, in the opinion of the Czechoslovak authorities, to solve these questions in the course of the sessions of the Commission on the basis of an exchange of views of all its members.

The Czechoslovak authorities attach exceptional importance to the Commission and to its work, especially with regard to its possible practical impact on the Czechoslovak Socialist Republic as a country with considerable foreign trade. They are therefore ready to support that the respective Czechoslovak scientific and legal institutions should also join in this work and provide experience from the legislative solution of legal problems in question in Czechoslovak special Code of International Trade, which came into force on 1 April 1964. This legislative work was prepared with a view of proposals and practice of various States and international organizations and includes almost all questions to which United Nations document A/6396 relates.

In its preliminary proposal the Czechoslovak side gives some suggestions for the work of the Commission; it is, however, aware of the fact that only the discussion related to those suggestions and to those which will be sent by the other States will show at which questions it would be useful and really desirable to direct the work of the Commission.

DENMARK

/Original: English/

The Danish Government finds that the new Commission should not engage in work which is already being undertaken by other international bodies, notably the International Institute for the Unification of Private Law (UNIDROIT) in Rome and The Hague Conference on Private International Law.

In the view of the Danish Government the Commission should therefore endeavour especially to promote and co-ordinate the work done to harmonize international trade law. With that end in view, the Commission should keep itself au courant with the programmes of other organizations' work on subjects relating to international trade law.

In the Danish view, the order of priority in the Commission's work programme, as indicated in paragraph 8 of section II of resolution 2205 (XXI), is a sound one. Hence, the Danish Government agrees that the Commission, as one of the first tasks, should review existing conventions on trade law in order to ascertain whether it will be possible to make more States accede to such conventions, notably States which did not take part in the preparation of them.

FINLAND

/Original: English/

The report of the United Nations Secretary-General contains valuable information about different aspects of the harmonization and unification work carried out in various fields of the law of international trade.

On the basis of the contents of the report, the Commission may proceed to promote, in different ways, the co-ordination of the harmonization and unification work carried out within different organs. This function heads the Commission's list of functions (II.8.a) which is contained in the resolution of the General Assembly. At present an efficient performance of this function is a requisite for the development of a fruitful and appropriate co-operation in this field.

In order to promote co-operation between States it seems necessary to provide the Commission and the States with information about various forms of past and current co-operation. At present it is difficult to obtain such information. A practical suggestion to the solution of the problem would be the establishment of a Documentation Centre constituting an efficient auxiliary body of the Commission and maintaining liaison with all organs operating in this field. On the one hand, the task of the Centre would be to publish information on co-operation in the field of law in regularly issued and widely distributed reports. On the other hand, the Centre could provide the States and various organizations and institutes with expert studies required by them.

For practical and economical reasons the Documentation Centre could possibly be attached to an already existing Institute. The International Institute for the Unification of Private Law in Rome (UNIDROIT) can be cited as an example. At present this Institute forwards such information through its annual report and in many other ways. The work of UNIDROIT has been valuable, but for practical reasons the scope of its work in this field has not been wide enough and the information published has not always been sufficiently up to date. On the other hand, the Commission may establish a Documentation Centre in connexion with its own secretariat.

The Commission should try to accelerate the procedure by which the States become parties to already negotiated conventions and treaties. This would promote harmonization and unification of the law of international trade. In order to achieve the above-mentioned aim the States should, as far as possible and in due time, inform the Commission about their standpoints on the agreements, on which the respective States have not yet expressed their final positions.

The Commission should also endeavour to suggest ways of harmonizing standards applicable to trade between States with different social systems. The study of the legal prerequisites for trade between States with different economic systems would also be of great importance.

GUATEMALA

/Original: Spanish/

The establishment by the United Nations of a Commission for the unification of Trade Law not only is commendable but was necessary to rectify the present almost chaotic situation. Nevertheless, we feel that the Commission that has been established will not be able to accomplish its task if, as is apparently desired of it, it endeavours to unify the Trade Law governing all the States Members of the United Nations; in so doing it would meet with almost insurmountable obstacles, such as the fact that not all countries have reached the same stage of economic development or have the same trade exchanges, or the existence of Federal States in which the Senate or the House of Representatives of the Federal State cannot legislate on trade matters, which are in the exclusive competence of each State member of the Federation, as is the case in the United States of America.

That being so, the best course would be to endeavour to unify by sectors, both with relation to countries and with relation to subjects. If that were accepted, Guatemala could suggest the following:

Paragraph 8 (a)

(1) The Commission shall carry out studies directed towards the unification of Trade Law, on a regional basis, with a view to the adoption of uniform laws or the conclusion of agreements.

(2) The Commission shall attach particular importance to the taking of steps, as soon as possible, for the unification and harmonization of the subjects which are of most importance in Trade Law, such as "Negotiable Instruments" or "International Sale of Movable Goods".

(3) The Commission shall maintain special contact with the commissions which are set up by other regional bodies and which are studying the unification and harmonization of Trade Law, such as the Commission for the Revision of the Code of Private International Law, with respect to Trade Law, which prevails in fifteen Latin American nations.

HUNGARY

[Original: English]

The preparatory work to be done by the Secretariat should cover - inter alia - the following:

I. Collecting and analysing the comments submitted in accordance with paragraph 1, sub-paragraphs (a) and (b), of section III of the said resolution.

II. Elaboration of draft rules of procedure of the Commission. In this respect UNCITRAL should have the necessary freedom of a flexible conduct of its procedures by utilizing the experiences of the International Law Commission.

III. Collecting and systematizing the following materials:

(a) International conventions in force and national laws aimed at the unification and harmonization of the law of international trade;

(b) Conventions and uniform laws awaiting entry into force, or draft conventions and laws, aimed at the unification and harmonization of international trade law;

(c) Trade customs and practices, model contracts, trade terms and provisions established and put into practice by international and national organizations and institutions;

(d) Conventions and national laws relating to the organization of commercial courts of arbitration concerned with international matters and to the recognition of arbitral awards.

IV. Collecting information on the preparatory work conducted, by the organizations and institutions referred to in paragraphs 11 and 12 of section II of the resolution, on the subjects coming within the competence of the Commission.

The Secretariat should, of course, continue this work also after the Commission has taken up its functions.

The material thus prepared by the Secretariat could be the basis of the work of the Commission. This work should include the following:

1. Consideration of the material under III (a) as to the possibility of making recommendations (a) for States to accede to particular conventions or to adopt uniform laws, and (b) for the States concerned to unify the divergent provisions of multilateral (regional) conventions relating to the same subject,

2. Consideration of the material under III (b) as to the possibility of making recommendations for States to adopt, to put into force, or to enact particular draft conventions and uniform laws.

3. Consideration of the material under III (c) as to the possibility of recommending its systematization, publication and more extensive application.

4. Consideration of the material under III (d) as to what recommendations could be made in relation to the conventions on international commercial courts of arbitration and to the jurisdiction, functions and rules of procedure of such tribunals.

5. Consideration of the information collected under IV as to what recommendations could be made to the organizations and institutions referred to therein.

The order in which the Commission would perform its tasks in the above-mentioned and in other fields should be left to the Commission itself, which ought also to prepare a programme of work for a relatively short period, for the next three to six years.

The work of the Commission requires great scientific erudition. For the sake of the economy of its own work, however, and to comply with the relevant provisions of the General Assembly resolution, the Commission should rely on the work of the organizations and institutions referred to in paragraphs 11 and 12 of section II of the said resolution when scientific research is needed in order to produce practical results.

The Commission is to be led by the general principle that its aim is to attain practical results, that is, to promote the more effective unification, harmonization and simplification of the law of international trade, and to disseminate to the largest extent possible the results of standardization of the law of international trade (trade terms, etc.), with a view to achieving the objects laid down in paragraph 9 of section II of resolution 2205 (XXI).

The Commission has to take into account that it has been established not in order that one more organization should deal with the scientific problems of the unification and harmonization of international trade law. Its aims are to sum up all the work conducted sporadically in this field and, by accumulating the scientific results achieved, to induce States and trade organizations to adopt legislative and other measures producing tangible benefits by simplifying and unifying the law of international trade.

ISRAEL

[Original: English]

1. The Government of Israel attaches particular significance to the third preambular paragraph of resolution 2205 (XXI) of 17 December 1966, stating that "international trade co-operation among States is an important factor in promoting friendly relations and, consequently, in the maintenance of peace and security". Israel accordingly suggested that one of the principal functions of the Commission should be to concern itself with removal of all obstacles to international trade, whether these obstacles have their origin in the diversity of economic, social or legal systems or in arbitrary and discriminatory measures adopted or encouraged by a State for purely political reasons.

2. The general position of the Government of Israel on the major questions of principle as they were reflected in the report submitted by the Secretary-General to the twenty-first session of the General Assembly was stated at the 949th meeting of the Sixth Committee of 6 December 1966. The Government continues to hold the view that the role of the Commission in "co-ordinating the work of organizations active in this field and encouraging co-operation among them" is one of the most significant functions of the Commission. Israel therefore considered it most important that the Commission should establish adequate and practical working arrangements with existing bodies operating in this field, particularly the International Institute for the Unification of Private Law, The Hague Conferences on Private International Law, and the Comité Maritime International, which would ensure the smooth operation of this co-ordinating role. In this connexion it is understood - and this appears to be brought out by the discussions which took place in the General Assembly - that this implies no interference whatsoever in the autonomy of the existing inter-governmental organizations operative in this field.

3. With regard to a possible programme of work to be undertaken by the Commission, it seems that a distinction should be made between those topics for which its role is essentially a co-ordinating one, and those for which it bears the main responsibility for the substantive work. As for the first aspect, obviously to a great extent this will depend on the nature and extent of the practical working arrangements which will be established by the UNCITRAL and the

existing organizations. For this reason alone it appears that the most urgent task for UNCITRAL at its first session would be to establish these proper working arrangements. At the same time there are certain topics for which it is believed that UNCITRAL in its co-ordinating role would constitute an appropriate organ for the final stages in the preparatory work. These could include topics such as the following (arranged in alphabetical order and not in order of particula priority):

Commercial Arbitration;

Commercial Associations (companies, partnerships, etc.);

Standard-Form Contracts (Contrats d'adhésion);

Standardization of Trade Terms;

Trade Insurance.

4. By "final stages in the preparatory work" is meant the stage immediately preceding the submission of the material to Governments for adoption. Israel considered it premature to express any view on the manner in which work on any particular topic should be finally consummated. Resolution 2205 (XXI) is understood to leave this aspect flexible and dependent upon the subject-matter under discussion.

5. In addition to the topics mentioned above, it appears that there are also several general problems in the sphere of international trade law as defined in the Secretary-Generals report where initiative could be taken by the Commission and appropriate patterns of work developed by the Commission for pursuing its studies in concrete terms. Included amongst these topics could be mentioned the freedom of international trade routes by air, land and sea or by any combination, on the principle of the unity of the voyage; and the progressive removal of restrictive trade and business practices, whether applied directly by Governments, or by individual traders.

6. The Government of Israel assumes that in working out appropriate work patterns, UNCITRAL will ensure the possibility of adequate consultation with all Governments at the appropriate stages of its work.

7. Although not mentioned in resolution 2205 (XXI), it is considered that the competent bodies of the United Nations should make adequate arrangements for the proper publication and dissemination of the reports, records and other documents of UNCITRAL.

ITALY

[Original: Italian]

These comments on UNCITRAL's work programme deal with:

(A) The definition of the expression on "law of international trade";

(B) The topics suggested in the report of the Secretary-General of the United Nations (A/6396) as examples of topics to be dealt with by UNCITRAL;

(C) The selection and priority of the various topics;

(D) Methodology in respect of UNCITRAL's future work.

(A) Paragraph 10 of the Secretary-General's report defines the "law of international trade" as "the body of rules governing commercial relationships of a private law nature involving different countries".

With this definition as a starting-point, it is difficult to define clearly the matters falling within the scope of the so-called "law of international trade" for two fundamental reasons.

(a) The primary reason is that, from the strictly juridical point of view, it is often difficult, particularly in countries in which civil law and commercial law have been unified in a single legislative text, to lay down a comprehensive definition of the matters falling within the scope of commercial law. In this connexion it will suffice to cite, among many examples, all the topics usually covered by the expression "formation of contracts". These topics, which are traditionally part of the civil law, certainly may not be disregarded when legislative unification of the subject of commercial contracts is under consideration.

Moreover, for some years scholars have been using the expression "commercialization of private law" to describe one of the most important developments in our legal system. By that expression they refer to the fact that the principles and institutions typical of this branch of private law have now crossed the traditional boundaries of the territory reserved to civil law. In conclusion, therefore, from both the theoretical and the practical point of view, we are faced with a continuous expansion of the sector referred to in the expression "commercial law".

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(b) The second reason is that the boundary line between private law and public law is even more evanescent, particularly in those countries in which many activities of public organs are conducted through typical private law institutions. One thinks, for example, of the State jointly owned enterprise sector as a powerful instrument of State intervention in the economy through a consummately private institution - the joint stock company.

The same problem also arises in such sectors, for example, as the defence of freedom of competition, in which characterization as public or private depends on a sometimes very debatable definition of the nature of the interests protected by the legal rule.

Consequently, it is necessary first of all to make a clear and precise choice of the sphere within which UNCITRAL should operate and to avoid overburdening it with an enormous preparatory task which will hamstring its work from the very beginning.

In this connexion, it is also necessary to consider the situation in certain branches of the law of international trade which have already been unified, in whole or in part, as a result of the work of public or private organizations or institutions. In our view, it would be harmful to disregard the results that have already been achieved; on the contrary, one of UNCITRAL's tasks must be to clarify the situation and to try to encourage co-ordination and improvement founded on the successful experiments of the past.

(B) The list of topics falling within the scope of the "law of international trade", granted that it has been provided simply by way of example in paragraph 10 of the Secretary-General's report, is very impressive and calls for careful consideration.

In this list, the following may be noted:

(B-1) There are some general subjects with deep roots in the private la[illegible] the various States (see the items in sub-paragraphs (a) (i) and (a) (ii): formation of contracts, and agency arrangements). The unification of such subjects will prove more difficult, since - and this must be stressed - a change in national legislation concerning the items in question would have a chain reaction within each country's existing traditional private institutions, which are sometimes the most resistant to radical and sudden change.

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Nevertheless, remarkable results have already been achieved, especially with respect to the international sale of movables, through The Hague Convention of 1 July 1964. Work is also in progress on an international convention relating to agency in private law relations of an international character (see International Institute for the Unification of Private Law (1966/Misc.66/1)).

In this instance the utmost circumspection was adopted, in the sense that the text of the uniform law was limited strictly to international legal relations, and solutions and principles were adopted which, precisely because they applied only in the international field, might even conflict with some national principle without giving rise to consequences unacceptable to the State in question.

Exclusive sale arrangements have similar features: in this case, however, consideration must be given to appraisal of the exclusive dealing clause in the light of the rules protecting free competition, which are in force in many States and are also provided for in the Treaty establishing the European Economic Community.

(B-2) In the Secretary-General's report, there are some more highly specialized topics, such as: (b) negotiable instruments and banker's commercial credits; (d) insurance; (e) transportation; (f) industrial property and copyright; and (g) commercial arbitration.

In theory, the unification of specialized topics presents fewer problems than the unification of the items cited above under (B-1). Indeed, the specialized character of the topic and the consequent uniformity of the economic problems to be solved within the various countries favour a uniform legislative solution. Nevertheless, difficulties arise when there are more general problems within each specialized topic as, for example, those of protection of a holder in due course (see the Geneva Uniform Law for Bills of Exchange), liability of the carrier or forwarding agent (see the transport conventions), and enforcement of arbitral awards within individual countries (see the international commercial arbitration conventions).

Without wishing certainly to minimize the importance of these problems, we nevertheless may point out that they have already been solved at the international level in many of the existing conventions on the topics cited above. Indeed, these are topics which may per se be defined as "intrinsically international" and

in respect of which there is considerable general opinion for the refinement of the uniform laws already in force and for the preparation of new texts covering matters not yet regulated.

(B-3) The examples given in paragraph 10 of the Secretary-General's report include the "laws relating to conduct of business activities pertaining to international trade" (see letter (c)).

This subject is certainly the most generic of all those mentioned in that report and even though I fully appreciate its fundamental importance, I feel that I must comment critically on the formulation of it.

The laws relating to the conduct of business activities at the international level may be very varied. We may cite, simply as examples, the rules concerning entry into and residence in different States, public safety and health provisions, the rules concerning the right of establishment and freedom of access to various commercial activities, tax and customs rules, and so on.

Consequently, the unification programme for these topics will have to be formulated more flexibly: even at the present stage, the unitary and dangerously generic formulation appearing in the Secretary-General's report is considered unacceptable.

(C) These considerations are relevant both as to the selection of topics and as to the order in which the topics are studied by UNCITRAL.

In this connexion, it may be useful to repeat a comment made above, namely, that it seems advisable to limit the Commission's work, especially at the outset, to a few well-defined topics with a view to avoiding a scattering of effort which would unfavourably affect the outcome of the work.

Consequently, we should suggest as simply a first step that the following order of priority should be adopted among the topics suggested in the Secretary-General's report:

(C-1) Negotiable instruments and banker's commercial credits

This is a topic of fundamental importance, as to which there has been support for legislative uniformity not just recently or just among lawyers but also and particularly in the business community.

There is today, as is well known, a clear-cut division between the common law countries and the civil law countries on the subject of negotiable instruments.

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Studies on the subject and contacts with interested persons show, however, that the points of real difference between the Geneva Uniform Law and the laws in force in some of the Anglo-Saxon countries could probably be overcome, particularly if the scope of the uniform law to be enacted was strictly limited to international negotiable instruments.

(C-2) International sale of goods and connected topics

The topic presents very substantial technical difficulties, particularly in respect of the formation of contracts between persons in different countries. Yet, in view of the above-mentioned Hague Convention, we consider it both possible and desirable to improve upon the results of past efforts in this field, which is exceedingly important since international sales are now the rule rather than the exception.

(C-3) Transportation

There are already many continental and intercontinental conventions concerning transportation by sea, air, road, rail and inland waterways. UNCITRAL might, therefore, appropriately study ways and forms of expanding the scope of existing conventions and rationally harmonizing the various rules now in force.

(C-4) Industrial property and copyright

As is well known, this subject is the one in which the unification process has made the greatest strides. Reference should be made, in this connexion, to the 1883 Convention of the Paris Union for the Protection of Industrial Property, which was amended consecutively at Madrid (1891), Brussels (1900), Washington (1911), The Hague (1925), London (1934) and Lisbon (1958), and to the 1886 Bern Convention for the Protection of Works of Art and Literature, which was amended at Paris (1896), Berlin (1908), Rome (1928), Brussels (1948) and Stockholm (1960). These Conventions led to a number of agreements on collateral matters.

However, the development of international trade, particularly since the last world war, has brought new requirements and new needs. We refer here particularly to the very large number of patent licence, technical assistance, and know-how agreements concluded at the international level, which very often are based on the profound differences in technological development which still exist between different States. Such agreements to a large extent are not governed by the provisions of existing uniform laws.

That is not all. The enactment in many States of laws protecting free competition to which we have referred above, and also the adoption of such laws at the international level by the Treaties establishing the European Economic Community and the European Coal and Steel Community interfere very seriously with the agreements in question.

Thus even a preliminary examination of these problems by UNCITRAL with a view to preparing a well-organized and detailed work programme would be very useful.

(C-5) Insurance

This too raises very interesting questions, which are to a large extent connected with the observations made above concerning existing differences in technological level among the various countries of the world. We refer, in particular, to the greater versatility and flexibility of certain types of insurance contracts (see, inter alia, product liability insurance, frequently used in the technologically more highly developed countries).

Moreover, even in the traditional branches of insurance (life, accident, civil liability, theft, fire with additional warranties, etc.) there are substantial differences in the various countries which are likely to be a serious obstacle to regulating the formation of commercial transactions such as sale contracts, patent licence, technical assistance and know-how agreements, and so on. Indeed, contract practice today is such that in many commercial transactions one of the parties is placed under an obligation to arrange insurance contracts not available (or available under particularly onerous conditions) from insurance companies doing business in his country.

(C-6) Commercial arbitration

This extremely knotty subject is complicated by a number of factors relating principally to the residence of the parties and to the possibility of securing enforcement of an arbitral award, even by penal measures, in places other than the country of either of the parties or directly by the country within which the arbitral organ sits. The subject, therefore, is closely connected with the field of procedural and private international law.

In addition, some important international conventions have established arbitral organs which have won considerable prestige in the international business community (see, for example, the International Chamber of Commerce founded in 1919

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with headquarters in Paris and the American Arbitration Association founded in 1926 in New York).

We hope, therefore, that UNCITRAL intends to take note of the existing situation and not to propose radical innovations but simply to extend as much as possible the reach of the conventions already in force and to lay down uniform supplementary regulations, where necessary, solely for the purpose of settling existing problems of practical application.

(C-7) Laws relating to conduct of business activities pertaining to international trade

As pointed out above, this item, although of great interest, has been stated too generically; accordingly, the following more specific statement is suggested:

(a) The first problem facing a person who wishes to conduct business activities at the international level is the right of establishment and the possibility, from the legal point of view, of conducting such activities in the various States covered by his area of economic interest. We hope, therefore, that UNCITRAL intends to consider the topics of the right of establishment and of the freedom of aliens to conduct various business activities. In that connexion it should be noted that the study of the rules laid down in article 52 et seq. of the EEC Treaty and of the measures taken by the Community organs may be very interesting from the comparative point of view.

(b) Secondly, commercial practice shows that taxes may be considered the decisive factor in the choice of the type of business organization that the businessman decides to establish abroad. Generally the choice confronting him is simply this: is it advisable to select the form of a subsidiary or branch of the main organization in the country of origin or to establish an autonomous company controlled economically by the main company but legally independent in the country of establishment?

The present divergent tax laws of the various States make this choice very difficult, precisely because it is impossible in the majority of cases to make an unequivocal and reliable prediction.

One of the principal reasons for this uncertainty is attributable to the fact that while in most countries the tax base is determined by the place of production of income in the economic sense, in others the place of realization of income, i.e., the place of conversion of income into cash, is considered significant.

UNCITRAL, therefore, must devote itself to the task of systematizing the various existing bilateral and multilateral conventions on this subject (which were designed primarily for the avoidance of double taxation) and thus make it easier to conduct international business activities, which are steadily expanding.

(c) Thirdly, the Commission should study the problem of the tax treatment of royalties, which is one of the many particular expressions of the more general phenomenon of the conduct of international business activities and of the consequent splitting up of income among the jurisdictions of various States. Royalties, of course, are the price paid by the licensee under patent licence, technical assistance and know-how agreements which, as noted above, as the principal instrument for the dissemination of industrial technology across national frontiers, represent an imposing economic reality of the present day.

The Commission's task should, therefore, be to prepare basic regulations to replace or at least to co-ordinate the rules contained in the myriad international conventions, bilateral and multilateral, on the subject.

(d) In the text of resolution 2205 (XXI) unanimously adopted by the General Assembly on 17 December 1966, "progressive harmonization and unification" are mentioned indiscriminately. It should be remembered that in fact the two terms refer to different ideas.

Unification generally means unification through international conventions establishing uniform laws (see, for example, the conventions on negotiable instruments, liability of carriers, civil aviation, and the like). However, the technique of conventions establishing uniform laws is not the only means available to legislatures for achieving unification of laws. In this connexion it may be well to recall, for example, the universal reception of a law or the reception of a law by one State directly from another State's code.

In each such process, however, there is one common feature, namely a certain imposition or at any rate innovation originating abroad.

The resulting change in internal positive law is, therefore, sudden (or immediate) and in the last analysis "forced".

In the case of the approximation or harmonization of laws, on the other hand, the situation is very different. Even here a sort of unification is

attempted, but this must be brought about through a slow and gradual process, without sudden changes. Such a movement of laws "towards each other" is intended, above all, to be spontaneous and to that end even the international measures through which it is accomplished generally take a very innocuous form, for example, recommendations or directives.

For the reasons stated above we hope that both techniques will be taken into consideration in the UNCITRAL work programme, since each offers advantages and disadvantages. On the one hand, the adoption of the technique of uniform law conventions offers, at least initially, the assurance that a real "uniformity" will be established among the various States; there remains, however, the frequently mentioned danger that similar legislative texts, once uniform, will become diverse as a result of divergent judicial interpretations in the various States.

On the other hand, the system of gradual harmonization assumes the existence of a limited union of States whose legal systems are not too opposed and which are subject to a federal or supra-State authority capable of directing, controlling and in a certain sense imposing this harmonization. The adoption of this system, it is true, encounters fewer obstacles within the States adopting it, but it demands the constant agreement of all the States and an organ which can promote the process and, where necessary, even impose specific directives, stages, and time-limits for harmonization.

It is difficult to predict what the situation will be in reference to UNCITRAL's future activity. Certainly, however, the best solution would be a combination of the two systems. In practical terms, whether one or the other predominates will depend on the choice of topics for legislative unification and on the response of the States concerned.

JAPAN

[Original: English]

1. As regards the topics for deliberation, the Government of Japan wishes to propose that the preparation of a draft statute of the UNCITRAL should be taken up in the first place and followed by the unification and harmonization of the law of international sale of goods.

(1) Preparation of a draft Statute of the United Nations Commission on International Trade Law

Since the present Commission is expected to continue its work during a considerable period, it is deemed advisable to recall the precedent of the Statute of International Law Commission and to establish a set of working rules of this Commission in the form of a Statute, stipulating, more specifically and in detail than in the aforementioned resolution, for its functions, competence, rules of procedure, voting methods and relationship with other international organizations. The Government of Japan, accordingly, suggests that the study and preparation of a draft statute of the Commission should be placed as the first priority item on the agenda.

(2) Unification and harmonization of the Law of International Sale of Goods

With regard to more substantive topics, it is considered proper to adopt as the first item to be discussed the unification and harmonization of the law of international sale of goods, for reasons shown below.

(1) The international sale of goods constitutes a most important practice of a fundamental character among a variety of acts of international trade. If the Commission successfully achieves productive results in this field, it will greatly contribute to the deliberations of topics to follow in other related fields.

(2) The international sale of goods, because of its uniform, universal and technical nature, represents a most fitting and feasible subject for the purpose of unification.

(3) Various international legal organizations and jurist groups have heretofore been engaged in the study of this very problem and, therefore, it represents a ripe sphere where ample achievements and pertinent data are readily available.

2. The Government of Japan is of the view that the conduct of the present Commission should be guided by the following principles.

(1) Every care should be taken to see that the activity of existing other organs concerned should not be adversely affected in any manner by the establishment and operation of this Commission. In particular, regarding such international organizations as the Inter-Governmental Maritime Consultative Organization and the International Civil Aviation Organization, which are currently active in their proper and special domains, the Commission should give due respect to their contributions, encourage their activity and refrain from playing a competitive role.

(2) It is vital to ensure that the consideration of the rules governing international trade should be pursued exclusively from technical and juristic points of view.

LAOS

[Original: French]

The Royal Laotian Government suggests that the United Nations Commission on International Trade Law should give priority to the study of the general legal problems affecting landlocked countries, and that the study of the resolution to that effect adopted by the General Assembly should be included in the said Commission's programme of work.

MALTA

[Original: English]

The Permanent Representative has the honour to propose, on instructions from the Government of Malta, that in carrying out the mandate entrusted to it by General Assembly resolution 2205 (XXI), the Commission should take due account of the necessity for a detailed study of the extent of overlapping in existing international conventions in this field, and the formulation of effective remedies aimed at ensuring actual harmonization of such conventions.

MAURITANIA

/Original: French/

To achieve more concrete and realistic results, emphasis must initially be placed on the regionalization of these problems. The harmonization and unification of international agreements is a long-term undertaking involving research and slow and difficult negotiations. It is therefore important that, side by side with this effort to achieve global uniformity, attention should be given to the following:

(1) The maintenance of national commodity-price stabilization banks and, possibly, the establishment of regional banks for similar products;

(2) The study of a Stabilization Fund to serve the banks as a regulator when prices are depressed; this Fund could, if desirable, be empowered to enter into negotiations with any other Fund pursuing the same aims;

(3) The establishment of an inventory of major African and Madagascan branches of production in the form of monographs kept constantly up to date and including, inter alia, market surveys and proposals for improving the market;

(4) The fixing, by agreement between the member countries, of similar prices for agricultural products for each season.

In this way, the programme laid down in the resolution would be completed and gradual progress would be made towards the long-term objective of the harmonization and unification of international trade law.

Apart from these points of detail, there is nothing to say about resolution A/RES/2205 (XXI) except that it calls for full approval.

NETHERLANDS

[Original: English]

The Netherlands Government deems it appropriate that the United Nations Commission on International Trade Law should at least in the initial stage concentrate on co-ordinating and stimulating the activities of existing agencies in the field of the unification and harmonization of the law of international trade. As a result, the scope of the activities of these formulating agencies could be broadened and their effectiveness increased. It would not be advisable for the time being that UNCITRAL exercise formulating functions itself. The Commission should only embark upon such a task after close relationships have been established with the existing formulating agencies so as to ensure that the expert knowledge and experience of these organizations can be fully utilized and duplication of activities be avoided.

The Netherlands Government wishes to draw attention to an important field of international trade law, viz. the international sale of goods (corporeal movables). After careful and lengthy preparations two conventions were adopted by the Diplomatic Conference on the Unification of Law governing the International Sale of Goods, held at The Hague in April 1964 (see report of the Secretary-General, A/6396, annex I, A.1 and 2). The Netherlands Government hopes that UNCITRAL will promote wide participation in these conventions in accordance with paragraph 8 (b) of resolution 2205 (XXI) of the General Assembly.

PAKISTAN

/Original: English/

The Permanent Representative of Pakistan to the United Nations has the honour to forward herewith a list of topics for consideration by UNCITRAL. The Government of Pakistan is in agreement with the observation in paragraph 27 of the Report of the Secretary-General on the progressive development of the Law of International Trade. It is the opinion of the Government of Pakistan that the topics mentioned in paragraph 184 of the Report may be taken up first, as much unification work has already been done in respect of these subjects and furtner progress will be somewhat easier to achieve than if the Commission started on new subjects altogether. Further progress in these areas may be made by encouraging wider participation in the conventions relating to the International Sale of Goods, Bills of Exchange and Arbitration and wider adoption of contractual terms; as suggested in paragraph 207 of the Report.

TOPICS FOR CONSIDERATION BY UNCITRAL

(1) International sale of goods:

- (i) Formation of contracts.
- (ii) Agency arrangements.
- (iii) Commissions on such sales.
- (iv) Exclusive sale arrangements.
- (v) Credit sale.
- (vi) Hire purchase.
- (vii) Protection of *bona fide* purchasers.
- (viii) Question of transfer of property arising from such sales.
- (ix) Question of jurisdiction of courts.
- (x) Question of agreed court in such sales.
- (xi) Problems of non-performance and *force majeure* in international contracts of sale.
- (xii) Regulation of transfer of property in sold goods, passing of risk, delivery of goods, payment of price through a bank under commercial credit on collection instructions, and arrangements for insurance and transport.

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(xiii) Conditions of delivery.

(xiv) Question of clearing.

(xv) Powers of attorney.

(2) Sales of immovable property/real estate in one State by or to nationals of other States:

(i) Agreements and contracts.

(ii) Protection of bona fide purchasers.

(iii) Question of transfer of rights arising from such sales.

(iv) Question of jurisdiction of courts.

(v) Question of agreed court in such sales.

(vi) Problem of non-performance and force majeure in international contracts of sale.

(vii) Powers of attorney.

(3) Transportation:

(i) Carriage of goods by:

(a) Sea.

(b) Air.

(c) Road.

(d) Rail.

(e) Inland waterways.

(f) More than one of the above means.

(ii) Forwarding agencies in international carriage of goods.

(iii) Collision or other incidents of navigation, assistance and salvage at sea.

(iv) Carriage of passengers and luggage by:

(a) Sea

(b) Air.

(c) Road.

(d) Rail.

(e) Inland waterways.

(f) More than one of the above means.

(v) Travel agencies.

(vi) Carriers liability in respect of:

(a) Passengers and luggage.

(b) Goods.

(vii) Maritime mortgages and liens.

(viii) Arrest of sea-going ships.

(4) Negotiable instruments.

(5) Joint ventures:

(i) Practices.

(ii) Procedures.

(iii) Legislation.

(6) Commercial arbitration:

(i) Model clauses.

(ii) Recognition and enforcement of foreign arbitral awards.

(7) International conciliation.

(8) (i) Institution of proceedings by a foreigner against a State for damage committed by an official or an organ of that State.

(ii) Question of State immunity.

(iii) Institution of proceedings against persons enjoying diplomatic immunity.

(9) Industrial legislation:

(i) Patents.

(ii) Designs and Models.

(iii) Standards and specifications.

(iv) Trade marks.

(v) Forms of organization and registration.

(vi) Use of machinery and equipment.

(vii) Requirements for plant-operating licences.

(viii) Training.

(10) Industrial Property:

(i) Facilitation of transfer of patented and unpatented technological and managerial know-how to developing countries.

(ii) Legislation.

(11) Plant and machinery:

(i) Export.

(ii) Conditions for supply and erection.

(12) Insurance and reinsurance:

(i) Life.

(ii) Property.

(iii) Marine.

(iv) Motor.

(v) Fire.

(vi) Accidents.

(vii) Calamities - major and minor.

(13) Credits for commercial or industrial purposes:

(i) Practices.

(ii) Procedures.

(iii) Terms.

(14) Trade between or with state-trading corporations. All problems as arising in the international sale of goods between private parties, so far as they are applicable to State-trading corporations.

(15) Copyright:

(a) Royalties.

(b) Authors.

(c) Artists.

(d) Translators.

(e) Radio and television broadcasts.

(f) Press information.

(g) Protection of intellectual and cultural property in the case of war.

(h) Prevention and prohibition of the illicit export, import and transfer of ownership in intellectual or cultural property.

(16) Bankruptcy.

(17) Mergers between industrial or business concerns registered in/located in/belonging to different States.

(18) Standardization and simplification:

(i) Of customs documentation and nomenclature.

(ii) Of tonnage measurement.

(iii) Of procedures and documentation relating to carriage of goods, and passengers and cargo, by sea, by air, by road, by rail, and/or by inland waterways.

(iv) Of products in respect of cargo and baggage to be carried by sea, by air, by road, by rail, and/or by inland waterways.

(v) Of trade documents.

(vi) Of international contract forms.

(vii) Of forms and procedures relating to international commercial arbitration.

(viii) Of forms and procedures relating to conciliation.

(19) (i) Choice of court in, and/or

(ii) Recognition and enforcement of foreign judgements concerning matters of:

(a) Torts.

(b) Inheritance.

(c) Letters rogatory.

(d) Administration of estates and bona ëeantia.

(e) Maintenance obligations.

(f) Protection of individual, particularly of privacy and reputation.

POLAND

[Original: French]

1. The Commission should first concentrate on unifying those aspects of the national legislation of the various countries which are generally in the nature of binding principles (jus cogens they cannot be changed by agreement of the contracting parties).

This is especially important because the different solutions adopted in the legislation of individual countries lead to instability in trade relations.

2. The increasingly important role of commercial arbitration proves that it contributes greatly to the development of international trade relations.

For that reason one of the important and equally urgent tasks of the Commission should be to seek means of ensuring a wider use of arbitration agreements which guarantee the recognition of arbitration clauses and the enforcement of arbitral awards.

In this connexion mention must be made of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the 1961 European Convention on International Commercial Arbitration.

3. A practical way of implementing the provisions of paragraph 8 (e) of the resolution might be for the Commission to make recommendations to the Governments of individual countries with a view to obtaining from them texts of any legislation which would be of interest to the Commission, and to setting up a central library which could thereafter furnish, on request, extracts from such texts to university departments, scientific centres and legal bodies in individual countries.

4. Under paragraph 9 of the resolution it would be desirable to engage in such activities as the holding of conferences for the scientific community of developing countries with the aim of gaining support for the idea of unification from jurists who continue to work under Anglo-Saxon or other regional systems of law.

This could provide an opportunity for exchanging opinions and for acquiring a better knowledge of the specific interests of such countries in relation to the work of international codification.

5. The wording of operative paragraph 11 makes it possible to include in the Commission's tasks that of drawing up a list of subjects which could be submitted to universities and other research centres as topics for scientific studies.

ROMANIA

/Original: English/

1. In the initial stage of its activity, the United Nations Commission on International Trade Law should proceed itself to the defining of the notion of "International Trade Law" and to the drawing up of a uniform terminology for the subject-matters included in this field of law.

2. The working programme of the Commission could be extended by including a distinct point referring to the norms of law that can be applied in the field of setting up in a country of industrial equipment by another country.

3. Among the subject-matters for study included in the report of the Secretary-General (A/6396 of 23 September 1966, p. 10, para. 10), the International Commercial Arbitration should enjoy priority and it should be registered at letter b in the list contained in this document, the other items for examination being adequately spaced out. Alongside with the study of this subject, the Commission could also approach some related problems, such as the measures aimed at encouraging the States to adhere to the existing Commercial Arbitration Conventions.

SINGAPORE

[Original: English]

1. It is noted that the United Nations Commission on International Trade Law (UNCITL) is established primarily to co-ordinate and accelerate "the process of harmonization and unification of the law of international trade". As the ultimate aim is the removal of legal impediments to world trade, the Government of Singapore supports the work of UNCITL.

2. Like developed countries, developing countries are seeking overseas markets. However, unlike the developed countries, developing countries have little experience in or knowledge of conflicting international commercial laws of many nations. Nor do developing countries possess the resources for adequate studies of such laws. It is therefore suggested that an advisory body be set up within the UNCITL to advise on specific conflicts or problems relating to international commercial law raised by developing countries. The functions of this advisory body should also include:

(a) Receiving from member countries complaints about conflicts of international trade laws which interfere with trade;

(b) Advising and reconciliating such conflicts.

3. Disseminated information on national legislations concerning international trade should include analysis and comparison of new and old legislations so that member countries are better advised on such changes.

4. As set out in the report of the Secretary-General in documents A/6396 and Add.1 and 2, the topics to be dealt with are:

(a) Industrial property;

(b) Transportation by sea, air and land;

(c) Sale of goods;

(d) Supply of machinery abroad;

(e) Bills of exchange;

(f) Banker's commercial credits;

(g) Commercial arbitration.

5. It is felt that special emphasis should be given to the following aspects of the topics listed above:

(a) Shipping;

(b) International credit;

(c) International sale of goods.

SWEDEN

[Original: English]

Paragraph 8 of section II of General Assembly resolution 2205 (XXI) denotes the various tasks to be undertaken by the Commission for the furthering of the progressive harmonization and unification of the law of international trade and as to the order of priority in the work programme of the Commission there seems to be no reason to depart from the order, in which these tasks are listed in that paragraph.

In carrying out its tasks the Commission should endeavour not to substitute the organizations already in existence, such as the International Institute for the Unification of Private Law in Rome and the Hague Conference on Private International Law, but it should primarily co-ordinate the work on the harmonization and unification of the law of international trade that is already being carried out within other organizations. For this purpose the Commission should pursue the survey, already begun in document A/6396, of the work in the field of harmonization and unification of the law of international trade, which is at present on the work programme of other organizations, and should continuously keep itself informed on the development of that work.

The Commission might also find it advantageous to carry out, at an early stage, a survey of existing international conventions in order to investigate what initiatives might suitably be taken for the purpose of promoting a wider acceptance of these conventions by States, which did not participate in the elaboration of them. Some of these conventions, which have been elaborated in collaboration between States which geographically, economically and socially are closely related, may perhaps be accpetable to other States only in a modified form. The Commission might, therefore, find it profitable to initiate the necessary modifications. Such conventions are for instance the Hague Conventions on International Sale of Goods and the Formation of the Contract of Sale.

The question what topics the Commission should deal with may be solved automatically, if its work will be primarily of a co-ordinating nature. The effectiveness of the work of the Commission will, however, no doubt benefit if the Commission refrains from entering fields where the results so far achieved are considered satisfactory.

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UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]

The competent Soviet organizations consider it advisable to include the following questions in the programme of work of the United Nations Commission on International Trade Law:

(1) The preparation of a draft convention on the elimination of discrimination in international trade, including the question of the application of the most-favoured-nation principle.

(2) The preparation of a draft convention on uniform periods of statutory limitation and the system of applying them in connexion with claims arising out of:

(a) foreign trade purchases and sales,

(b) agreements relating to the carriage of goods by sea,

(c) agreements relating to the insurance of goods.

(3) The compilation of a list of interpretations of terms used in foreign trade purchases and sales (f.o.b., c.i.f., f.a.s., f.o.r., and so on).

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]

1. Resolution 2205 (XXI) rightly acknowledges the efforts already made by other inter-governmental and non-governmental organizations towards the harmonization and unification of the law of international trade and emphasizes the co-ordinating role of the new Commission as well as conferring on it the task of initiating new projects which may appear to be advisable. Clearly the Commission's point of departure must be the work already accomplished in the field of development of international trade law. It is also the understanding of the United Kingdom that it is not the purpose of the Commission to supersede the existing agencies which are active in this field. Its function is to collaborate with them and encourage their co-operation. The Commission's programme of work should be framed with due regard to these considerations.

General problems

2. Although considerable progress towards harmonization and unification has already been made in certain areas, the decision to advance the process on a United Nations scale introduces new dimensions into the field which affect the nature of the problems that will have to be faced. Hitherto unification of commercial law has been effected largely within regional groups. Obviously the endeavour to promote unification between regions on a world-wide scale will give rise to new problems and greater difficulties and may well require the development of new techniques. An aspect which will require particular attention is the needs of developing countries. The International Association of Legal Science has already made valuable studies of some of these problems.

The need to take stock of work already done and in progress

3. An essential first step is to take stock of what has already been achieved and of work in progress in other organizations, both at world level and regionally. The Report on the Progressive Development of the Law of International Trade submitted by the Secretary-General to the twenty-first session of the General Assembly (A/6396) contains a valuable preliminary survey. This survey

should be completed, brought up to date and be subject to regular future revision. UNCITRAL should act as a clearing-house for information in its field of activity and it is suggested that a register of agencies and subjects of unification should be established. This register should be issued annually and should list:

(i) the agencies engaged in harmonization and unification of international trade law, and

(ii) conventions, uniform laws and other instruments and formulations, concluded or in the course of preparation and aimed at the harmonization or unification of international trade law, together with information about parties, entry into force and so on.

4. For this purpose contact should be established with the various organizations active in the field and they should be requested to keep the Commission regularly informed of their activities. The Secretary-General's report refers in paragraph 35 to the "Table of Legal Activities on the Programme of Certain International Organizations" published by the International Institute for the Unification of Private Law (UNIDROIT) and the latest edition of this table brought up to date to 1 January 1966 is reproduced in annex IV to the report. This publication affords a useful starting point, but as pointed out in the introduction the present table is not complete.

5. Probably at a later stage it will be desirable to add, either in the same or in a separate publication, information about legislation or proposed legislation and other measures by Governments relating to international trade law and also concerning relevant decisions of national and international tribunals.

Analysis of the Commission's field of activity and development of an over-all plan

6. The Commission should also, as one of its initial tasks, make an analysis of its field of activity in order to identify the sub-heads comprised in it and with a view to developing an over-all and systematic plan. Such an analysis will provide a necessary basis for the classification and collation of the information gathered by the Commission as a result of its survey of work already done or in progress. This in turn will assist in identifying the areas and subjects to which the Commission can most profitably direct its future efforts.

7. The Commission's general aim might be envisaged as the progressive development of an International Commercial Code. The method would be to establish a general outline of the Code and then to conceive each measure of unification of international trade law as part of it. It would be possible to comprehend within this Code regional measures as well as those designed for world-wide application, and in due course to publish annotated editions. A publication of this nature would have obvious advantages for reference and research and would assist in the development of the Code as a cohesive whole.

Four avenues of progress

8. On the basis of the survey proposed above it should be possible for the Commission to make progress in four directions:

(i) by promoting wider acceptance of existing conventions, uniform laws and other instruments, which are suitable, at least as a temporary measure, in their present form;

(ii) by arranging for the revision of existing instruments when this is desirable to bring them up to date or to adapt them for wider acceptance;

(iii) by considering what conventions and other instruments in the course of preparation by other organizations might be made suitable for world-wide adoption;

(iv) by selecting new subjects for harmonization or unification.

It will be necessary to establish priorities and arrange for the requisite technical studies and elaboration of texts to be undertaken. As regards (i) and (ii) above, the United Kingdom wishes to emphasize the desirability of making the maximum use of what has already been accomplished. The Commission must resist the temptation to re-negotiate existing instruments, especially those which have a wide measure of support, unless there are compelling reasons for doing so.

Selection of topics for study

9. It is clearly of importance that in the selection of topics for unification or harmonization the Commission should proceed with the most careful deliberation

after adequate research to establish needs and due priorities. It must be borne in mind that the resources of national authorities available for new studies and for the negotiation of new instruments is not unlimited. At the same time the difficulties of harmonizing domestic laws on a world-wide basis should be appreciated. The Commission will no doubt have to be content with modest beginnings and there are likely to be many problems within its field of activity which for the time being it will be more profitable to tackle regionally or even bilaterally. The United Kingdom is considering the question of topics which might be selected for action by the Commission and will put forward its proposals later.

Co-operation with other organizations

10. It has been noted above that it is not the purpose of the Commission to supersede existing organizations. On the contrary it should work in close collaboration with them. Appropriate working relationships should be established for this purpose. Organizations such as the International Institute for the Unification of Private Law in Rome and the Hague Conference on Private International Law have done and are doing work of great value. They should be encouraged to continue their efforts and develop them to meet new demands and it is desirable that the Commission should make full use of their experience and services when commissioning new studies.

UNITED STATES OF AMERICA

[Original: English]

The United States wishes to express its appreciation for the valuable report on the Progressive Development of the Law of International Trade (A/6396). The report amply illustrates the breadth and complexity of the areas of private law of international trade. Paragraph 8 of section II of General Assembly resolution 2205 (XXI) outlines the means by which the Commission shall further the progressive harmonization and unification of that law. Given the breadth of the field and the scope of the Commission's mandate the United States believes that the Commission can most effectively achieve its goals by concentrating its energies in co-ordinating the work of organizations active in unifying areas of private law of international trade and in promoting codification and wider acceptance of terms, provisions, customs and practices of international trade. This co-ordination would include suggesting to the organizations, where appropriate, revision of existing conventions or preparation of new conventions or model laws. In the view of the United States it would be unwise for the Commission to perform drafting functions; such activity would dissipate the resources of the Commission and impair the effective discharge of its mandate.

The United States observed that the Secretary-General's report contained an impressive catalogue of the important work being done by a number of organizations in highly technical areas of the law. Many of these, such as the United International Bureaux for the Protection of Intellectual Property, have developed a uniform body of law and conference mechanisms through which it is possible to improve or modernize that law. The United States expressed the view that were the Commission to attempt to draft conventions in such highly technical areas it would not only slow the process of unification but also might be likely to disturb a carefully built infra-structure on which further unification of the law can be based.

In drawing up its work programme the Commission must decide at the outset whether it wishes to cover the entire field of private international trade law or to concentrate its efforts in certain areas. The United States believes that it should take the larger view of its functions and seek to survey the entire field.

When it finds an area of international trade law in which harmonization or unification appears both necessary and promising, it should determine which organizations are most concerned with the area, invite their co-operation and seek to co-ordinate their harmonization or unification efforts.

The United States suggested that the Commission may wish to consider a number of factors in identifying an area to call to the attention of the organizations. One would be the likelihood that harmonization or unification of the area can be successfully effected by the organizations concerned. Closely related to the first factor would be the promise of wide acceptance of such unification or harmonization. Perhaps the most important factor would be the impact that successful unification or harmonization in the area would have on the over-all development of the law of international trade. Hopefully, the comments of the Governments and of the organs and organizations referred to in sub-paragraphs (f) and (g) and in paragraph 12 of section II of General Assembly resolution 2205 (XXI) will assist the Commission in weighing these factors.

After many years of study a group of experts working under the direction of the Conference of Commissioners on Uniform State Laws, the organization responsible for unification of state laws in the United States, produced a Uniform Commercial Code which has been adopted in almost every jurisdiction and which has greatly facilitated the growth of interstate commerce. This experience led the United States to suggest that in making its survey the Commission consider whether the progress already made on the international level in two areas covered by the Code - (1) Bank Deposits and Collections and (2) Warehouse Receipts, Bills of Lading and Other Documents of Title - is sufficient to warrant additional unification or harmonization efforts in these areas. If the Commission should decide to sponsor such efforts, it should invite the appropriate organizations to undertake further work. According to the Secretary-General's report, the organizations active in these areas include the International Chamber of Commerce, the United Nations Economic Commission for Europe, and the Comité Maritime International. Whenever the Commission requests further work from interested organizations, it should co-ordinate their work in accordance with paragraph 8 (a) of its mandate and encourage their co-operation.

The United States also suggested that the Commission focus on INCO trade terms. The United States believed that the Commission might usefully promote the wider acceptance of such terms in accordance with paragraph 8 (c) of the Secretary-General's report (A/6396).

YUGOSLAVIA

[Original: French]

The Government of the Socialist Federal Republic of Yugoslavia is convinced that the United Nations Commission on International Trade Law will be of particular importance not only for the promotion of co-operation in matters of international trade and friendly relations between States, but also for the maintenance of close links with other organs of the United Nations and specialized agencies which in varying degrees are concerned with international trade. Hence, the Commission will contribute by its work to the maintenance of international peace and security.

Pursuant to the request made by the United Nations General Assembly in the above-mentioned resolution, the Government of the Socialist Federal Republic of Yugoslavia considers that it would be desirable to include in the Commission's programme of work the regularization of law in the following fields:

(a) International trade in general;

(b) International transport and insurance of goods;

(c) International payments.

In view of the importance of standard contracts in international trade, the Yugoslav Government considers that it would be desirable to give such contracts a prominent place in the work of the United Nations Commission on International Trade Law.

Following the example of the United Nations International Law Commission, which has prepared a draft law of treaties, the United Nations Commission on International Trade Law could consider preparing a set of draft rules of international trade law as one of its future tasks the performance of which would be in the interests of all States, and therefore in the interests of the promotion of international co-operation in the commercial field and of friendly relations in general.

III. COMMENTS SUBMITTED BY ORGANS AND ORGANIZATIONS

UNITED NATIONS ORGANS

Economic Commission for Asia and the Far East

/Original: English/

Item (2) Transportation

Carriage of goods by road and rail

The above topic would be of special interest to our Transport Technical Bureau in ECAFE. Since the Asian Highway Project has been progressing very rapidly, the scope of its future activities will no doubt be broadened in due course.

The secretariat through its Transport and Communications Division has commenced preliminary studies in the possibility of setting up a trans-Asian railway network which, if successful, will eventually link countries of the ECAFE region with those served by the European and African systems.

The secretariat is also interested in the subject of transit traffic for land-locked countries especially in such countries as Laos, Nepal and Afghanistan. Although the Barcelona Convention is currently in operation, it deals, however, with the problems of transit traffic by road only.

A number of bilateral arrangements on road and rail traffic has also been made by countries in the region such as those between Afghanistan and Pakistan, India and Nepal, and Laos and Thailand.

Carriage of goods by inland waterways

Among the countries in the region which maintain a system of inland waterways of international or regional significance are countries between India and Pakistan and the four riparian countries of the Mekong River Project, namely, Laos, Thailand, Cambodia and the Republic of Viet-Nam.

Burma, China (Taiwan), India, Laos, Thailand and the Republic of Viet-Nam were among those countries which accepted the 1956 Convention in Measurement Vessels Engaged in Inland Navigation. It is not known, however, whether any of these countries have made any ratifications since then.

For the study on an inter-island communications project, the secretariat has initiated work on the development of sea ferrers, port facilities and internal communications in the island countries of the Philippines and China (Taiwan).

Item (g) Commercial arbitration

The work of International Trade Division in the areas of commercial arbitration and customs administration (e.g. ECAFE Code of Recommended Customs Procedures) should be of interest to the Commission.

Economic Commission for Europe

/Original: French/

The Economic Commission for Europe (ECE) has drafted a number of General Conditions of Sale and Standard Forms of Contract on very varied subjects and is continuing this work as required. At present, it is drafting General Conditions of Sale for a number of agricultural products. Since these General Conditions of Sale are widely used outside as well as inside Europe, it seems to me that one of the first topics which the United Nations Commission on International Trade Law could consider might be the wider application of these General Conditions of Sale, perhaps in modified form. Experts would have to meet for each type of product involved in an international sale or transfer and, on the basis of the General Conditions of Sale established in ECE or elsewhere, draw up general conditions or standard forms of contract which could be applied throughout the world.

The experts on mechanical engineering, meeting in ECE to draft general conditions of sale for certain products, recently took the view that it might be useful to prepare guides for the use of the contracting parties concerning certain areas of international trade in which conditions were not yet ripe for the drafting of standard forms of contract or general conditions of sale. For example, as you know, we are at the moment preparing a guide to the international transfer of know-how and a guide to contracts for the construction of buildings and public works linked with the erection of industrial plants. It appears to me that, if the new United Nations Commission is considering drafting general conditions of sale for industrial products for international application, it might also consider preparing guides for use by the contracting parties, where the subject has not yet reached a suitable stage for the drafting of standard forms of contract.

So far as arbitration is concerned, it would seem that the procedure laid down in the European Convention on International Commercial Arbitration and in the ECE Arbitration Rules whereby a Special Committee is established to appoint the arbitrator or the third arbitrator when the parties to a contract are unable to do so themselves could usefully be applied at the world level whenever a dispute arises between parties from different geographical regions or with different economic systems. The procedure provided for in the European Convention on International Commercial Arbitration is, as far as I know, the most objective in existence and it is probably more appropriate than those under which recourse is ultimately had to the drawing of lots. If this system were to be universally applied, there would naturally have to be as many special committees to appoint arbitrators as there are possible bilateral combinations of different geographical regions or different economic systems in the world; if, however, the United Nations Commission on International Trade Law were to take up the matter, I believe that, as in any other matter, it should not adopt too general an approach but should tackle the problem in a practical manner with experts from the regions concerned, so that the system for the appointment of arbitrators would always be suited to the conditions governing the specific relations between two given regions.

With regard to transport, you no doubt know that ECE has been particularly active through its Inland Transport Committee. Twenty-three international transport conventions or agreements have so far been concluded under its auspices and it has actively assisted in the drafting of four conventions of a universal character; other conventions are in preparation. In particular, I should like to point out that, as a result of ECE's efforts to promote co-ordination, it has been possible to achieve the standardization of certain provisions, uniformity of views on final clauses, and a most satisfactory procedure for signature, ratification, notification and amendment. On the other hand, transport conventions prepared under the auspices of other organizations - UNIDROIT, International Maritime Committee, Council of Europe - and adopted at diplomatic conferences convened by a State do not have all these advantages and may hamper the proper co-ordination of efforts in this regard. I therefore feel that it would be preferable for ECE - rather than other organizations not so well equipped - to continue to draft transport conventions of a regional nature, applicable to all the countries

participating in its work. The Commission on International Trade Law should ensure that this is the case. Transport conventions of a universal nature could probably be dealt with advantageously by the new United Nations Commission. Indeed, it would be preferable to entrust this task to one of the appropriate United Nations organs rather than to other organizations less well equipped to prepare international conventions. On the other hand, it might be useful to follow a well-tried practice and entrust the first stages of drafting to one of the United Nations regional economic commissions even if the conventions were eventually discussed at the international level.

I hope that these suggestions will facilitate your task and be of some interest to the members of the Commission on International Trade Law. I realize that there is nothing sensational about them; however, they are based on the experience acquired in ECE, which has shown that, to be useful, work must be practical and take into consideration all the interests involved. I should remind you in this connexion that the working parties which have dealt with all these questions of international trade law in ECE are usually composed of government representatives assisted by jurists and, in particular, by specialists in the subject under consideration, who are members of a national or international professional organization; this approach has proved most useful and has made it possible to draft instruments which are very widely accepted. The Commission on International Trade Law may perhaps wish to follow this example.

United Nations Conference on Trade and Development*

/Original: English/

185. Consideration of a draft resolution concerning this topic (TD/B/L.98) which had been submitted at the Board's fourth session in September 1966 was deferred until the fifth session pending the circulation of a report by the Secretary-General of the United Nations asked for by General Assembly resolution 2102 (XX).1/

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* This text reproduces paragraphs 185-191 of the Report of the Trade and Development Board on its fifth session (A/6714) held in Geneva from 15 August to 9 September 1967.

1/ Official Records of the General Assembly, Twenty-first Session, Supplement No. 15 (A/6315/Rev.1), part two, chapter XI, para. 171.

At its twenty-first session, the General Assembly, having considered that report[2/] and the report of the Sixth Committee, adopted resolution 2205 (XXI) of 17 December 1966 by which it established the United Nations Commission on International Trade Law having as its objective "the promotion of the progressive harmonization and unification of the law of international trade". The Assembly decided that the Commission would be composed of twenty-nine States to be elected at the Assembly's twenty-second session and to be broadly representative of the principal legal and economic systems.

186. At the Board's fifth session this item was considered in the light of General Assembly resolution 2205 (XXI) and of a note by the UNCTAD secretariat (TD/B/138 and Corr.1) which contained in its annex III an analysis of comments by Governments and inter-governmental and non-governmental organizations on the programme of work of the newly established Commission.

187. In general, the representatives who spoke in the debate on this item welcomed the establishment of the Commission and the observance of the principle of the equitable representation of the principal legal and economic systems. Some of these representatives regretted that the Assembly resolution did not attribute to UNCTAD the central role, envisaged in the draft resolution submitted at the Board's fourth session, in the progressive development of the law of international trade. Many representatives considered, however, that it would contribute materially to the success of the Commission's work if UNCTAD were closely associated with and co-operated in the Commission's activities.

188. Some of the representatives who participated in the debate took the view that the new Commission's principal task would be that of "co-ordinating the work of organizations active in this field and encouraging co-operation among them" (General Assembly resolution 2205 (XXI), para. 8 (a)).

189. With reference to paragraph 10 of the above resolution, directing the Commission to report simultaneously to the General Assembly and to UNCTAD, some representatives considered that no action should be taken by UNCTAD until recipet of the Commission's first annual report. Others considered, on the contrary, that the UNCTAD secretariat should begin forthwith to gather material of possible interest to the Commission which would be placed at the Commission's disposal. They suggest that the material might relate to the rules and practices of

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2/ Ibid., Annexes, agenda item 88, documents A/6396 and Add.1 and 2.

international trade and to the inhibiting or favourable effects of existing rules and usages on international trade.

190. In the course of the discussion, the representative of a developing country suggested that the Commission might, within the scope of its programme of work, take up the study of specific matters viz. (a) the drafting of uniform national legislation; (b) the unification of national law in certain fields of international trade law; (c) certain problems arising in private international law; and (d) the gathering and dissemination of texts of existing regulations in the field of international trade law.

191. It was agreed that the Secretary-General of UNCTAD should be asked to transmit to the Secretary-General of the United Nations, and through him to the Commission (when constituted), the comments and suggestions made at the Board's fifth session concerning the Commission's work.

INTER-GOVERNMENTAL ORGANIZATIONS

Central Office for International Railway Transport

/Original: French/

1. The International Convention concerning the Carriage of Goods by Rail (CIM) and the International Convention concerning the Carriage of Passengers and Luggage by Rail (CIV) are among the oldest international codifications; they are, however, revised periodically (the last time was in 1961) to meet changing conditions and needs. Originally limited to Europe, the sphere of application of these Conventions has been extended in recent years to the Near and Middle East (Turkey-in-Asia, Syria, Iraq and Lebanon) and to North Africa (Morocco and Tunisia); in the near future, it will also be extended to Iran and Algeria. The Central Office is trying to extend still further the sphere of application of the CIM and the CIV, and would like to be supported in its efforts to do so by the United Nations Commission on International Trade Law in accordance with paragraph 8 (b) of the Commission's work programme as set forth in section II of resolution 2205 (XXI).

2. In February 1966, the States Parties to the CIV supplemented the latter by an additional Convention relating to the liability of the railways for the death of, or injury to, passengers; and the ratification procedure for this additional Convention is in progress in the various States. This international regulation of the liability of the railways differs on various points from similar regulations already in force or still in course of preparation for other modes of transport: the Warsaw Convention on International Carriage by Air of 1929/1955; the draft Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR) (UNIDROIT, Rome 1961); and the International Convention for the Unification of Certain Rules Relating to the Carriage of Passengers by Sea, Brussels, 29 April 1961. There is no doubt that international passengers and transport enterprises would benefit from the greatest possible measure of approximation between these different sets of regulations. Research into this question has, moreover, been undertaken by the International Institute for the Unification of Private Law (see the report summarizing the debates of the Research Committee, prepared by Mr. G. Caillau; U.D.P. 1955/Et/XXXIV-Doc.5). With a view to the possible eventual revision of these diverging sets of regulations for the various modes of transport, it would be desirable for the possibilities of approximation to be considered either by your Commission or once again by the International Institute for the Unification of Private Law.

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3. In connexion with the research now being done by the Inland Transport Committee of the Economic Commission for Europe on intercontinental transport by containers, it might be useful to consider in greater detail the problem of direct carriage by rail/sea/rail combined on the basis of a uniform transport contract. A few years ago, the Central Office considered this problem and discussed it with various associations and organizations concerned; I will willingly make available to you, if you wish, the documentation prepared on the subject at that time. In the opinion of the Central Office, it is a question of establishing, for the direct carriage of transcontainers by rail/sea/rail combined, a uniform set of regulations under which the carriage by rail in overseas countries (for example, in America) would be effected on the basis of the international law on the carriage of goods by rail (CIM) at present in force in Europe. That would represent an extension of the sphere of application of the CIM to countries overseas.

Council of Europe

/Original: English and French/

Having regard to the Commission's terms of reference under resolution 2205 (XXI) and the activities of other inter-governmental organizations in the same field, I feel that the Commission, in drawing up its work programme, ought to take into consideration the work already done by those organizations and the projects they are currently studying.

Accordingly, bearing in mind the definition of the "law of international trade" given in paragraph 10 of the above-mentioned report of the United Nations Secretary-General, I should like first to draw the Commission's attention to the following Council of Europe conventions:

(1) European Convention Relating to the Formalities Required for Patent Applications;

(2) European Convention on the International Classification of Patents for Invention;

(3) Convention on the Unification of Certain Points of Substantive Law on Patents for Invention;

(4) European Convention on the Liability of Hotel-keepers concerning the Property of Their Guests.

The first three of these conventions, which were drawn up in conformity with article 15 of the International Convention for the Protection of Industrial Property and have been signed by member States of the Council of Europe, are open to accession by non-member States which are members of the International Union for the Protection of Industrial Property.[1/] For such States, accession to the first- and second-named conventions (which have been in force since 1955) is effected, respectively, by the deposit of an instrument of accession with the Secretary-General of the Council of Europe, and by notification through diplomatic channels to the Government of the Swiss Confederation; to the third-named convention it is effected by the deposit of an instrument of accession with the Secretary-General of the Council of Europe at the invitation of the Committee of Ministers of the Council of Europe.

The fourth-named convention (liability of hotel-keepers) which came into force on 15 February 1967 may also be acceded to by non-member States at the invitation of the Committee of Ministers. Although it may be felt that this convention is not concerned with the "law of international trade" in the strict sense, I think that it should be brought to your notice because it deals with a subject that affects international tourism.

The following instruments may also, I feel, be of interest to UNCITRAL:

(1) European Convention Providing a Uniform Law on Arbitration;

(2) European Convention on Foreign Money Liabilities.

The first of these was opened for signature by member States of the Council of Europe in January 1966; the other will be opened at the end of this year. Again, both may be acceded to by non-member States.

Another convention, the European Convention on Information on Foreign Law, is in preparation and will probably be opened for signature in 1968. This establishes administrative machinery whereby the courts of Contracting States may obtain, in civil or commercial matters, information on rules of foreign law they are asked to apply.

Among other current work at the Council of Europe mention should be made of studies on:

(i) lost or stolen bearer securities;

(ii) the place of payment of money liabilities;

1/ South Africa, Israel and Spain have acceded to the first-named convention, Australia and Israel to the second-named.

(iii) "time limits";

(iv) uniform interpretation of European treaties;

(v) international transport of animals.

Lastly, the Council of Europe has introduced a system under which, each year, member States transmit to the Secretariat information on their legislative activity in the previous year which is likely to be of interest to other member States.

The information thus received is assembled in a document and distributed to all member States. Any member Government can then obtain from another Government fuller particulars of an act or bill that is of particular interest to it.

European Economic Community

/Original: French/

As can be seen from your communication, the work envisaged will be mainly concerned with private law, and will cover a very extensive field, so that a choice of subjects will have to be made and an order of priorities for discussion established. This selection is difficult to make without a list of the conventions already concluded or in course of preparation, but, as a preliminary indication, it would seem appropriate to give some priority to two of the points mentioned in your letter, namely:

(a) (ii) Agency arrangements, and

(d) Insurance.

This work, however, should preferably not extend beyond the sphere of private law and should not deal with questions of public law concerning the economy, even when those questions affect relations between enterprises and the conduct of business in international trade, as in the case of regulations regarding combines, dominant interests and mergers. In fact, the various regulations under public law which establish the general framework of economic activity constitute an interdependent whole, the various aspects of which are difficult to isolate.

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Hague Conference on Private International Law, The

/Original: English/

As UNCITRAL may be expected to focus their attention primarily on questions of the unification and harmonization of substantive law, as distinct from the unification of conflicts law, the Commission has some difficulties in indicating a topic selected from the former field, as this is generally speaking, outside the Conference's scope.

However, it was felt that it might be useful if one particular aspect of all unifying activities be brought to the attention of UNCITRAL.

In the field of the unification of substantive law rules much attention has been given lately to the problems concerning the sphere of application of the unified rules as such.

If in former times the unification of substantive law rules had as its only object the unification of domestic law systems, a new element was introduced when the unified rules were conceived as viewing only legal relationships of an international character. Thereby they acquired a distinct character and did not apply to purely domestic relationships, in other words those in which all links with foreign countries were lacking.

A technique has been developed aimed at making the unified substantive rules for international cases immune from the impact of rules on the conflicts of according to this system, States who accept the unified rule will apply it to all international cases being litigated in their courts, regardless of the fact that the legal relationship concerned may have originated within other jurisdictions, which have not themselves adopted the new uniform law. A typical example of this technique may be found in the recent Convention signed at The Hague on 1 August 1964, on the Uniform Law on the Sales of Corporal Movables.

The latter Convention however permits States to make reservations to this system, the most significant in this context being that according to which States may reserve the right to apply the uniform laws only to legal relationships between parties domiciled in a Contracting State which has likewise adopted the Uniform Law.

This makes it clear that there exists, in the case of all uniform laws, a problem as to the delimitation between the respective spheres of application of the new uniform law and of the domestic legal systems. It is felt that this problem is

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very closely linked with the object of the traditional choice of law systems because it shows the need to have rules indicating when the uniform law is to prevail, and when a foreign domestic law is to be applied.

It was thought that UNCITRAL would do well to give serious consideration to this problem, every time that they elaborate a new uniform law. You will understand that on this issue the Conference is ready to give to UNCITRAL all the assistance which its special experience in the field of the unification of the law of conflicts will enable it to give.

Of course, the problem signalled above is not the foremost question to be examined, as it may well be considered as subordinate to the contents of the uniform law itself, and one may need to provide differently for different cases.

However, should this problem be treated without due and careful study, the success of the Uniform Law may itself be impaired, because any too-sweeping clause on the sphere of application is liable to run counter to the principle of basic justice underlying the precepts of private international law.

International Institute for the Unification of Private Law (UNIDROIT)

/Original: English/

The Institute's comments are presented in three parts. Part I deals with the general question of co-ordination and describes the working methods of the Institute. Part II provides information with respect to branches of international trade law which are included in the programme of work of the Institute and makes certain suggestions which the Commission may wish to consider when drawing up its own programme of work. Part III contains observations as to the question of topics and priorities.

I

Co-ordination

The report of the Secretary-General states that there has been insufficient co-ordination among formulating agencies and that consequently their activities have tended to be unrelated and a considerable amount of duplication has resulted (p. 66).

The main reason of duplication would appear to be that a considerable amount of uniform law is being drafted by autonomous regional organizations comprising countries that have in common an identical political, social and economic background.

The remedy for this state of affairs, which reflects the fact that in many fields inter-State relations are to a considerable degree still being conducted on various regional levels, is not easy to find. The Institute has examined the problem of co-ordination on various occasions, notably at the meetings of organizations concerned with unification of law which it periodically convenes. The proceedings of these meetings and the reports submitted by the various organizations and individual participants have been reproduced in the Institute's Yearbooks.1/

As to practical steps that could be taken, the following suggestions may be made:

(a) The Commission, as a central co-ordinating body, should regularly make available full information about the programmes of work of international organizations that are concerned with matters of international trade law. It might wish to indicate the matters which it considers to be of practical importance in this context and examine the possibility of formulating broad guiding lines in respect of certain of these matters.

As is known, the Institute publishes, on the occasion of the meetings of organizations concerned with the unification of law (which it convenes every three or four years), a table of matters which are included in the programmes of work of these organizations. It is intended to improve the presentation of these tables, to publish them more frequently and give them a wider distribution.

(b) The Member Governments of the United Nations should be recommended to use their influence with the organizations of which they are members to the effect that programmes of work are drawn up in such a way so as to prevent unnecessary duplication. This co-ordination at national level in turn requires the furnishing of information, mentioned under (a) above.

1/ See in particular the Yearbook for the Year 1963, which is devoted to the problem of unification on regional and universal levels.

(c) In so far as the Institute is concerned, it is suggested that an agreement be concluded between the United Nations and the Institute, complementing the agreement concluded in 1959 by an exchange of letters between the Secretaries-General of the two Organizations, which would cover, inter alia, the problem of co-ordination. Similar agreements on co-ordination might be concluded with other organizations.

Working methods of the Institute

It may, in the context of collaboration between the Commission and the Institute, be desirable to inform the Commission about the working methods of the Institute.

Although the Statute does not exclude the undertaking of studies in comparative law, the primary task of the Institute has always been conceived as consisting in the drafting of laws and conventions with the object of establishing uniform law and improving international relations in the field of private law.

The Institute performs this "legislative" task through committees of experts or working groups whose members are appointed by the Governing Council. These committees or working groups have before them preparatory work (comparative law studies, preliminary drafts, etc.) carried out by the secretariat of the Institute or other scientific institutions or individual experts. It should be noted that the members of the committees or working groups participate in the work in their individual capacity and do not represent their Governments. This permits the elaboration, at the initial stage, of texts according to criteria of objectivity and impartiality. Once a preliminary draft is completed, it is sent to the members of the Governing Council for written observations. The final draft takes account of these observations and is then placed before the Governing Council which may either approve the draft or refer it back to the committee. In the case of approval, the draft is sent to member Governments, and to the institutions or organizations concerned, for observations.

The Governing Council decides on the destination of the draft, e.g. it may ask a member Government, or the Institute, to convene a diplomatic conference or submit the draft to another international organization (e.g. United Nations Economic Commission for Europe, Council of Europe, United Nations).

The Governing Council also decides on the subjects to be included in the working programme of the Institute, although the final approval of the programme of work is given by the General Assembly of the Institute (consisting of representatives from member Governments). Proposals for the study of questions relating to the unification, harmonization or co-ordination of law may be made by member Governments and international institutions or associations.

It follows from the above observations that the co-operation which it is hoped will be established between the Commission and the Institute should as far as possible take account of the statutory and traditional working methods of the Institute. It is in the field of preparing draft texts of laws and conventions that the Institute has acquired valuable experience and it is in this field therefore that the Institute could best collaborate with the Commission.

It is therefore suggested that any tasks given by the Commission to the Institute under paragraph 8 (c) of section II of resolution 2205 (XXI) adopted by the General Assembly should, whenever possible, also comprise the task of preparing preliminary drafts.

II

(a) International sale of goods and kindred matters

Important progress has been made, on various levels, in the field of international sale and different methods (conflict rules, uniform law, sets of international rules and general conditions) have been followed in formulating rules governing this important branch of international trade.

These methods do not rule each other out and further progress could be made through each of them. It is suggested that the Commission should examine the merits of formulations that already exist and seek to secure wider acceptance of them.

Since the Institute is mainly concerned with the uniform law method, we will limit ourselves to furnishing the Commission with information about the future prospects of the two Hague Conventions on International Sale of 1964 and the present activities of the Institute relating to these Conventions.

Hague Conventions of 1964

The position, as at 30 June 1967, is that twelve Governments have signed the two Conventions relating to a Uniform Law on the International Sale of Goods and the Formation of Contracts for the International Sale of Goods. So far only the United Kingdom has ratified the two Conventions (cf. Uniform Laws on International Sales Act 1967) but the European Economic Community, on the proposal of the Netherlands Government, arranged, in January 1967, a meeting of representatives of member Governments at which the question of ratification by the six countries of the Community was considered.

Attention is drawn to the Final Act of the Diplomatic Conference on the Unification of Law Governing the International Sale of Goods which, in its annex, sets out two recommendations, the second of which instructs the Institute:

(1) in the event of the Convention relating to a Uniform Law on the International Sale of Goods coming into force by 1 May 1968 to "establish a committee composed of representatives of the Governments of the interested States, to review the operation of the Law and to prepare recommendations for any Conference convened pursuant to Article XIV of the Convention";1/

(2) in the event of this Convention not having come into force by 1 May 1968, to "establish a committee composed of representatives of the Governments of the interested States, which shall consider what further actions should be taken to promote the unification of law on the international sale of goods".

It follows that the Institute must establish, in consultation with the Netherlands Government which convened the Diplomatic Conference on International Sale, after 1 May 1968, a committee of representatives of Governments whose terms

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1/ Article XIV: "1. After the present Convention has been in force for three years, any Contracting State may, by a notification addressed to the Government of the Netherlands, request the convening of a Conference for the purpose of revising the Convention or its Annex. Notice of this request shall be given to all Contracting States by the Government of the Netherlands, which shall convene a conference for the purpose of such revision if, within a period of six months from the date of such notice, at least one quarter of the Contracting States notify the said Government of their agreement with the request."

of reference are those set out in paragraph 1 or 2 of the recommendations, referred to above, as the case may be. Since the Commission may wish to follow developments closely, the Institute intends in due course to consult the Commission in regard to the implementation of the resolution and will keep it generally informed.

Kindred matters

The uniform law on international sale leaves out certain matters which are nevertheless relevant in international trade relations. For this reason the Institute has prepared, or is in the process of doing so, various uniform laws for the purpose of drawing up a co-ordinated and systematic body of uniform law related to the most important legal relations and institutions connected with international sale but not governed by the 1964 Convention. Of these "satellite" laws, as they are sometimes described, the uniform law on the formation of contracts for international sale of goods has already been adopted at the Diplomatic Conference held in 1964. The draft Convention providing a Uniform Law on the Contract of Commission on the International Sale of Goods was transmitted, in 1966, to the member Governments of the Institute and to organizations and institutions concerned, for an opinion. The observations received so far show a favourable attitude by Governments to the draft. The Governing Council will in due course decide, in the light of the observations made, what steps should be taken to achieve the adoption of a Convention governing the contract of commission. The Institute intends to consult the Commission in this respect and keep it generally informed.

A draft Uniform Law on the Protection of the Good Faith Purchaser of Goods will be completed in the course of this year and be subject to the procedure explained in part I of these comments.

Another draft Uniform Law on the Conditions of Validity of Contracts for the International Sale of Goods is presently being drawn up by a Committee of Experts of the Institute and should be completed next year.

There is widespread agreement that the effort of the Institute to draw up a co-ordinated body of Uniform Law related to the international sale of goods is an important step forward towards the ultimate goal of a modern code of international trade law. As such, the work of the Institute deserves close attention and full support of the United Nations Commission.

One further aspect of uniform law conventions may be mentioned here since it brings out a particular advantage of the method consisting in achieving uniform practice by unifying the relevant substantive law. Since this method permits the drawing up of modern, up-to-date law and, where this is in the interest of international trade relations, the overriding of existing municipal law, the body of uniform rules may serve as model laws for countries that wish to improve their existing law. Thus, the Hague Convention of 1964 on international sale, and its preparatory work, has already greatly influenced the commercial codes of some African countries and there is good reason to think that this particular way of the gradual adoption of uniform rules can be further developed and would by itself facilitate international commercial relations.

Finally, uniform law may be referred to by the parties to a contract as the proper law of the contract.

Agency

A draft Convention relating to a Uniform Law on Agency in Private Law Relations of an International Character was transmitted, in 1966, by the Institute to its member Governments, and to the Organizations and Institutions concerned, for their opinion with regard to the need for such uniform provisions and the substance of the draft text. The replies received so far are favourable.

The United States Government, considering that the law of agency would be a boon to international trade and should have a wide appeal among States, has suggested to the Institute that it should advise the Commission of its work in this field and transmit the relevant documents to the Secretariat for the use of the Commission. The Institute's Governing Council agreed in principle to this suggestion and the Institute therefore intends to communicate to the Commission the draft Convention relating to a Uniform Law on Agency together with the observations received from its member Governments and the organizations and institutions concerned, and to consult the Commission as to the procedure to be followed.

The Institute accordingly suggests that the Commission include the law of agency in its programme of work.

(b) Negotiable instruments

A study of the possibility of widening the unification of law regarding bills of exchange and cheques was undertaken by a Sub-Committee of the Governing Council of the Institute, assisted by additional experts in 1953. In 1955, the Sub-Committee announced that it had reached a series of conclusions that seemed to justify a continued effort to effect a rapprochement between the system established by the Geneva Conventions of 1930 and 1931 and the system of the common law countries. Research was temporarily shelved until 1966 when the Governing Council decided to resume work in this field.

Although the Geneva Conventions have been ratified, or adhered to, by only a limited number of States, they have nevertheless brought about a considerable measure of uniformity, owing to the fact that many countries have used the Geneva rules as a model law for their legislation without formally adhering to the Conventions.

Apart from the need for comparative law research, it would appear necessary to consult competent organizations and professional circles for the purpose of assessing whether an attempt to obtain wider unification of the law of negotiable instruments would be of real value at the present time.

Work is now in progress and the Institute is prepared to place the results of its research and consultations before the Commission in the event of the Commission deciding to include this question in its programme of work.

(c) Transport law

The Institute has produced drafts of the following Conventions:

Road Transport

1. Draft Convention on the contract for the International Carraige of Passengers and Luggage by Road (CVR).

This draft has been revised, in 1966, by a preparatory Committee of Governmental Experts which will meet again this year. It is expected that the Italian Government will convene a diplomatic Conference in 1968 for the adoption of the revised draft Convention.

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2. Draft Convention on the Contract of Combined International Carriage of Goods. No decision has as yet been taken as to its destination.

3. Draft Convention on the contract of Forwarding Agency in the International Carriage of Goods. This draft has been transmitted to member Governments of the Institute for comments. In the light of these comments, the Austrian Government will decide whether to convene a diplomatic Conference.

4. Convention on the contract for the International Carriage of Goods by Road (CMR). This Convention was concluded under the auspices of the United Nations Economic Commission for Europe in 1956.

Inland Navigation

5. Draft Convention on the Contract for the Carriage of Goods by Inland Waterway (CMN). This draft is at present under consideration by the United Nations Economic Commission for Europe.

6. Preliminary draft Convention on the Contract for the Carriage of Passengers and Luggage by Inland Waterway (CVN).

7. Draft Convention relating to the Limitation of the Liability of Boat Owners.

Unlike the conventions relating to carriage of goods and passengers by air and sea, those relating to carriage by road rail and inland navigation are of a regional character. Whilst this is explained by the nature of the means of transport, it should nevertheless be examined whether a wider geographical application of some of the above Conventions would be desirable. Owing to the increasing internationalization of transport by road (facilitated by the construction of intercontinental highways and the development of ferry services from one coast to another), it would in our view be justified to envisage a co-ordinated system of rules applicable to this mode of transport. Reference is made in particular to the Geneva Convention of 1956 on the Contract for the International Carriage of Goods by Road (CMR), and to the Institute's draft Conventions on the Contract of International Combined Carriage of Goods and on the Contract of International forwarding Agency of Goods.

The Institute also wishes to inform the Commission of its work on the unification of provisions on the contract of bailment and on the liability of

persons in charge of the goods during carriage. This work is still in the preliminary stage of comparative law research and consultations, but it would be useful for the Institute to have the views of the Commission on the relevance of this matter to its general programme of work.

(d) Commercial arbitration

There exists a number of Conventions in this field but further progress could be made by means of a uniform law applicable in cases where arbitration has been agreed upon by parties who, at the time of the conclusion of the agreement, have their habitual residence in different countries.

A draft uniform law governing such cases was completed by the Institute in 1954; this draft also deals with the important problem of execution of awards in a country other than the country of the forum. The Institute's draft inspired the recently concluded European Convention providing a Uniform Law on Arbitration and it should be examined whether it could form the basis of further progress on universal level.

(f) Uniform interpretation and application of international conventions and uniform laws

The Institute suggests that it should address to the Commission a survey of its research and conclusions in this matter. It draws the attention of the Commission to its publication Uniform Law Cases which gives a systematic record of the most important judgements delivered by the courts of different countries in respect of the interpretation and application of uniform law Conventions.

III

In his letter of 13 March 1967, the Legal Counsel of the United Nations also refers to the question of topics and priorities to which the Commission may be expected to devote its attention at an early stage.

The Institute is of the opinion that, in so far as the programme of work of the Commission relates to the unification and harmonization of law as such, it should include most of the matters referred to in Part II of these comments. Among these, the agency could be given a certain priority in view of its importance to international trade and of the fact that the Institute has prepared a draft in regard to which observations from Governments and international organizations and institutions concerned will shortly be available.

With regard to the question of topics, much will evidently depend on the decision of the Commission as to the drawing up of model laws. In some cases, agreed legal texts could serve the purpose of being incorporated in an international convention and of serving as model laws. In other cases, in particular where harmonization is the principal aim, model laws should be drawn up which do not necessarily have to pass through the stage of governmental negotiations but in regard to which consideration by the Commission would probably suffice.

Organization for Economic Co-operation and Development

/Original: English/

As to the contents of the Report, it is felt that an endeavour to co-ordinate the work of international organizations active in the harmonization and unification of the law of international trade (Chapter II, 8 (a) of resolution 2205 (XXI)) is of the utmost importance notwithstanding the fact that its realization may not always be immediately possible due to the fact that some of the work being undertaken may have to be treated confidentially for some time. Nevertheless, if an endeavour were made to collect information as to the work of international, regional and even bi-national organizations active in the above field, this would seem to be a most useful step towards attaining the ultimate objective of co-ordination.

With regard to the various topics mentioned in the Report, it would appear that the list contained in paragraph 10 of the Report is fairly exhaustive. Nevertheless, since the question of terminology is of such vital importance in any of the topics considered, it is possible that it might be considered as a topic by itself. This could of course be conceived in an extremely wide manner ranging from the interpretation of multilingual international instruments that are silent on the question, to the consideration of common legal or commercial terms trade by trade and country by country, since these conflicts of terminology often impede commercial transactions and the development of trade. Within the above context there is a wealth of legal material covering different aspects of the problem, such as the "Terms used in international trade and payments, and national accounts" published by the O.E.E.C., the "Incoterms" of the International Chamber of Commerce, and the standard forms of contract and general conditions of sale of the United Nations itself.

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On the question of possible priorities concerning the subjects mentioned in the Report, it would seem that a very careful choice will have to be made if efforts are not to be dissipated. As to the criteria to be adopted, it may be suggested that these might be whether a particular topic chosen is ripe for action at a world level and of practical use. With these objectives in view, it would appear that the subject of the formation of contracts (not limited to the sale of goods since it is of importance in a number of other fields such as export credits, the supply of technology, etc.) may meet the above criteria. It is also suggested that agency arrangements might be a useful topic to which priority could be given, since these arrangements are a source of frequent conflict between legal systems and may impede commercial transactions. Lastly, it would seem that commercial arbitration, which is of vital importance to the development of trade, is now in a sufficient stage of development at a world-wide level to be given a significant place in UNCITRAL's activities.

Organization of American States

/Original: English/

I. Introduction

These comments will cover the following questions: (i) the proper role of UNCITRAL regarding the substance of international trade law, in respect of other inter-governmental organizations active in the domain of international trade law; (ii) the approach suggested for UNCITRAL regarding the substance of international trade law; (iii) suggestions as to topics suitable for progressive harmonization or unification of international trade law on a priority basis; and (iv) the activities of UNCITRAL and their effect on developing countries, with special reference to technical assistance possibilities in this area.

II. Co-operation between UNCITRAL and other inter-governmental organizations.

It is difficult to demarcate clearly, within the general domain of codification and progressive harmonization of law, with special reference to international trade law, the respective spheres of action of international organizations of a public character, especially as between the regional and the world-wide level. Such demarcation is nevertheless necessary with a view to achieving an optimum measure of interaction and co-operation between international organizations concerned with these problems, as will be the case of the Organization of American States, among others, and UNCITRAL.

There being within the inter-American system a long tradition of juridical achievements, the General Secretariat of the OAS is of the opinion that the field of international trade law is one in which there exists ample opportunity for constructive collaboration and complementarity between the regional body and the United Nations.

UNCITRAL should not attempt to absorb the work being done in this regard by regional international organizations, nor indeed should it duplicate their functions and activities; likewise, the Commission's work should strive to abstain from overlapping that of certain international functional institutions, both governmental and non-governmental, such as UNCTAD and UNIDO among United Nations agencies, the International Association for the Protection of Industrial Property, the United International Bureaux for the Protection of Intellectual Property (BIRPI), the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (UNIDROIT), and others.

The proper role of UNCITRAL, it is believed, would be to co-ordinate the manifold activities of these public as well as private international organizations, so as to avoid wasteful overlapping, and, on the positive side, to bring their concerted efforts to bear upon specific, carefully circumscribed technical issues of international trade law - in the broad acceptation given to that term by the United Nations - in which it is felt that it would be useful to have a universal rule rather than one of more limited geographic scope.

International trade being truly universal, it is evident that such legal rules of world-wide applicability are required in addition to others that may enjoy wider acceptance within a narrower group of national jurisdictions; this is

so especially taking into account the growing trend towards regional economic integration arrangements, which are predicated upon the intensification of intra-regional trade, and gradually developing their own inwardly-turned systems, in some instances at the level of "community law", for the legal governance of such trade, as well as of other economic matters. The close connexion between international trade law and regional economic integration, which in turn was recognized by UNCTAD to be one of the instrumentalities to achieve development, should be taken into account by UNCITRAL in the treatment of all matters within its purview.

In this context, it should be the main concern of UNCITRAL to co-ordinate the various localized systems of international trade law, and, wherever a common denominator is found, to endeavour to formulate general rules of world-wide applicability, which obviously are beyond the scope of any of the regional organizations. The rules which will eventually be formulated by UNCITRAL may therefore pre-empt the field, in so far as there is an actual demand for a universally binding corpus of legal norms regarding certain topics clearly identified as deserving priority in their consideration by the Commission.

Having seen in general terms what kind of activities may advantageously be handled by UNCITRAL, it becomes necessary to relate the activities entrusted to the new Commission, in respect of the progressive harmonization and gradual unification of international trade law, with the parallel activities of international regional organizations, including the OAS itself. It is believed that the value of the work performed by such organizations, which will continue to be the proper object of their concern, would lie chiefly in the formulation of a regional consensus regarding certain topics, in response to the felt needs of the juridical communities they respectively represent.

In the concrete case of the Organization of American States, and despite the occasional and peripheral technical difficulty in reconciling the legal viewpoint of the Latin civil law-oriented countries with those of the common law tradition among the Member States of the Organization, the fact remains that the underlying affinities between the legal systems of the area are probably greater than those prevailing in any other region in the world today, thus leading to much better chances for reaching a consensus. Should it be feasible to achieve similar results in respect of other regions, the work of UNCITRAL would be considerably facilitated by relying upon the resources available, at the regional organizations respectively representing them, for the formulation of rules of international trade law. /...

In the case of the OAS, in addition to the studies undertaken by the Department of Legal Affairs of the General Secretariat, there is a special organ entrusted with the progressive development and codification of international law, as well as with the harmonization and unification of international law on a hemisphere-wide basis, namely the Inter-American Juridical Committee, which meets once a year in Rio de Janeiro. The Committee acts as the permanent body of the Inter-American Council of Jurists, and uses the Department of Legal Affairs as its technical secretariat. The Protocol of Amendment to the Charter of the OAS, though not yet in force, enlarges the responsibilities of the Inter-American Juridical Committee, the membership of which will be increased from nine to eleven members, and at the same time abolishes the Inter-American Council of Jurists. The Committee will be one of the principal organs of the OAS.

It would be desirable that the Juridical Committee should co-ordinate its activities, connected with legislative harmonization and unification, with those of UNCITRAL. (The most significant activities of the Committee in recent years relating to international trade law have been reported to the United Nations and were summarily described in the Report of the Secretary-General of the United Nations to the twenty-first session of the General Assembly, Corrigendum, on "Progressive Development of the Law of International Trade", document A/6396/Corr.2, of 17 November 1966, to which there is nothing to be added as of this date.)

III. Nature and scope of the work of UNCITRAL:

(a) Substance and Procedure:

It may be anticipated that UNCITRAL will concern itself with the progressive harmonization and ultimate unification of rules of international trade law of a substantive character rather than with procedural rules, including those regarding conflicts of laws, which are already being handled by other institutions and organizations, both at the regional and at the universal level. In this respect, again, a worth-while contribution could be made by such institutions and organizations, including the OAS, in obtaining a consensus both in the selection of topics and in their treatment.

(b) Method:

In the view of the General Secretariat of the OAS, the Commission should not, as a methodological issue, concentrate on the formulation of model laws, which, as

past experience within the inter-American system has amply demonstrated, are seldom if ever enacted as municipal law in the majority of developing countries. Furthermore, in the extremely rare instances in which such model laws have indeed been enacted, on a limited scale, they present the disadvantage of becoming quickly crystallized in rigid form, and thereupon impervious to subsequent change. Rather, it would be preferable for UNCITRAL to direct its efforts towards the gradual codification, by topics, of certain rules of international trade law, in the form of draft conventions to be considered either by diplomatic conferences especially convened for the purpose, or by the General Assembly of the United Nations, depending on the character and complexity of the rules involved. This procedure of law-making by way of traditional treaties has proved its worth in the practice of the International Law Commission, and it is felt that nothing warrants a departure from the now prevailing system. While progressive harmonization of international trade law seems entirely feasible, and ought indeed to be encouraged, there is evidence to support the view that unification is a practically utopian goal, which the new Commission should not vainly attempt to pursue.

(c) Approach to Regional Economic Integration:

An additional but still preliminary question to be considered by UNCITRAL in framing its own work programme and one of approach rather than of substantive topical interest, concerns the relationship between international trade law and regional economic integration. UNCITRAL could make a valuable contribution not only by addressing itself to the study of this problem within the context of its consideration of substantive topics and by recommending action to solve it, but also by studying those legal aspects of regional economic integration which have common characteristics pertaining to the domain of international trade law. Among these would be, for instance, the legal status of multinational enterprises, and other related issues of commercial law.

(d) Services to Member States:

Perhaps UNCITRAL's most serious responsibility would lie in the field of technical assistance to be rendered, albeit indirectly, to Member States of the United Nations. There are several ways whereby the Commission may fulfil its role in this respect, without deviating from its primary goal to promote the gradual harmonization and ultimate unification of international trade law.

One of these ways, which would really depend largely upon the secretariat of the Commission, would be the preparation, with the co-operation of professional institutions, of a detailed analytical survey of existing multilateral treaties, including those of only regional scope, regarding international trade law, with an evaluation of each of these instruments in terms of their potential usefulness on a truly world-wide basis, with a view to adherence or accession by third countries, partial revision or abrogation.

In this very complex and necessarily time-consuming task, it would seem that such regional bodies as the OAS could render a very useful service, by undertaking this revision process as regards regional treaties. The Commission might thus eventually find itself, in addition to its functions of unification and progressive harmonization, and in part by virtue of such functions, acting as a universal clearing-house for the revision of treaties involving international trade law.

Thus, while it is, for example, perfectly conceivable that the basic principles contained in a given convention evolved within a strictly European framework, such as the European Convention on International Commercial Arbitration, concluded under the auspices of the United Nations Economic Commission for Europe in 1961, may, with certain modifications, be suitable for adoption on a universal plane, conversely, another regional agreement, such as the Inter-American Convention on Facilitation of International Waterborne Transportation (Convention of Mar del Plata, of 1963), might be recommended for revision, amendment and eventual adoption by countries outside the inter-American system. It is clear, however, that such a vast undertaking could only be accomplished on a topical basis by sectors of priority interest.

IV. Substantive topics deserving consideration by UNCITRAL

On the basis of past experience within the inter-American system, the following topics could be considered by UNCITRAL, with a view towards the formulation of draft international conventions embodying substantive rules:

(a) International sale of goods:

This topic refers to a revision of the 1964 Hague Convention relating to a Uniform Law on the International Sale of Goods, regardless of whether or not

it comes into force by May 1968, possibly on the basis of the 1955 draft. The Inter-American Juridical Committee has the item on its agenda, on a remand from the Inter-American Council of Jurists, and, the Committee may consider presenting the Latin American point of view on this exceedingly complex problem, which necessarily has to be treated within a world-wide framework. Special attention can be devoted in this context, to the intricate problems of the formation of international sale contracts.

(b) International industrial property law:

This topic is mentioned with special reference to patents and trademarks. Now that there are increasing prospects for a universal patent system, with a draft European patent scheme, plus a patent reform bill pending approval by the United States Congress which will permit the envisioning of a Euro-American patent system, and the recent accession of the USSR to the Industrial Property Convention, UNCITRAL may wish to undertake the preparatory technical work, including a study in depth of the relative advantages and disadgantages of the examination and registration systems, in order to ascertain to what extent they may be reconciled, for the drawing up of a universal convention on patents and trademarks in line with the principles adopted by the United Nations governing the transfer of technology to developing countries. In this respect, it is believed that it would be of general interest for UNCITRAL to co-operate on the substantive and technical aspects of the subject (the complexity of which ought not to be underestimated), with UNIDO, without prejudice to the relevant contribution to be rendered by such functional non-governmental institutions as BIRPI.

The OAS is currently engaged in similar preliminary work with a view towards achieving gradual harmonization of industrial property law in Latin America. At its fifth session, held in San Salvador in February 1965, the Inter-American Council of Jurists recommended to the Council of the OAS that the General Secretariat prepare a comparative study of the legal and administrative regulations in force in the Member States of the Organization in respect of industrial property, with a view to determining whether it would be more advantageous to improve the present system of protection, by means of a specialized conference of experts in the field which would adopt a new Inter-American Convention on the subject, or to recommend the adherence of the American Republics to the Paris Union. At the first

Congress of the Inter-American Association of Industrial Property (a private, non-governmental institution), held in Buenos Aires in November 1966, a recommendation was approved pointing out the advisability of the adherence of all countries of the Americas to the Paris Union. It was also recommended that they should adopt the International Classification of Goods and Services approved in Nice in 1957.

The OAS has not yet scheduled the proposed specialized conference on industrial property, but it would seem that the American States would not be unwilling to consider standards and procedures of universal scope in the domain of industrial property law, (in addition to others of strictly regional scope) which could be a fitting theme for consideration by UNCITRAL, particularly bearing in mind the impact of industrial property legislation on economic development.

(c) International commercial arbitration:

This has traditionally been an area in which action is taken on a regional scale, as for instance in the case of the European Convention on International Commercial Arbitration; as for the OAS, the Inter-American Council of Jurists approved at its third session (Mexico, 1956), a draft uniform law on commercial arbitration, which however was never adopted by the American States. The Inter-American Juridical Committee may include in its work programme, during its 1967 session, the study of this matter with a view to the possibility of concluding a regional convention. It is felt that action on this plane should be continued, with reference to the peculiar problems posed by intra-regional trade, particularly as a by-product of regional economic integration.

Arbitration is of course but a part of the wider problem of the settlement of disputes in international trade - which, it is suggested, lends itself especially well to treatment on a universal scale. Accordingly, the consideration of draft rules of world-wide applicability in respect of international commercial arbitration, might be useful to ultimately achieve unified norms, embodied in a multilateral convention to be concluded under United Nations auspices to govern the settlement of international disputes of a commercial nature between private parties. The term "private parties", as employed throughout this discussion of the role of UNCITRAL, comprises also State agencies when directly engaged in international trade in the capacity of such private parties.

Reference should also be made in this context to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (in force since /...

7 June 1959); however, although said convention has been in effect for over eight years, it was ratified or acceded to by only thirty-one States, including some but by no means all of the major trading nations (with the notable exception of the United States and the United Kingdom), and, it should be pointed out, only five American States are among its twenty-five signatories; only two, however (Ecuador and Trinidad and Tobago) ratified the Convention or acceded to it. This seeming reluctance, on the part of many developing countries and of others with an important share of world trade, to become parties to this Convention, suggests the timeliness of its revision by UNCITRAL. Meanwhile, regional agencies such as the OAS would continue their endeavours to improve commercial arbitration procedures at the regional level, of which the European Convention is but an example.

V. Conclusion

Summing up, the General Secretariat of the OAS is of the opinion that UNCITRAL will find that many topics are ripe for progressive harmonization and codification. In undertaking a task of such magnitude, the Commission should be ever mindful of the practical necessities of world-wide trade, and ought to take into account, in so far as possible, the expertise of specialists in international trade matters, including representatives of the business community.

While close collaboration with UNCTAD, as laid down in General Assembly resolution 2205 (XXI) which established UNCITRAL, and to a more limited extent with UNIDO, will provide at least in part some of the expert guidance required, the Commission ought to pay particular attention to the value of its permanent collaboration on technical and substantive aspects of international trade law, with other inter-governmental organizations - including the OAS - as well as with professional institutions of various kinds, devoted to the scientific study of these questions. In this respect, UNCITRAL should be fully aware of its potential for the co-ordination of the pertinent activities of all interested agencies, without overlapping their own programmes in this area.

United International Bureaux for the Protection of Intellectual Property

1. Normative Regulations (paragraph 191). Among the most successful normative regulations by multilateral treaties are the Paris Convention for the Protection of Industrial Property (hereinafter referred to as "the Paris Convention") and the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as "the Berne Convention"). They can be called successful because they regulate much of the industrial property and copyright law, because they have 77 and 55 Member States, respectively, and because they have been constantly modernized - through periodic revisions - during the 84 and 81 years, respectively, of their existence.

2. Model Laws (paragraph 192). The final text of BIRPI's Model Law for Developing Countries on Inventions is, I think, already in your possession. The final text of BIRPI's Model Law for Developing Countries on Trade Marks, Trade Names, and Unfair Competition, is in the hands of our printer and will be available within a few weeks. The draft of BIRBI's Model Law for Developing Countries on Industrial Designs will probably be published early next year. Finally, it is planned to revise and make an improved version of the African Model Law on Copyright established several years ago and, more generally, to transform it into a model law for developing countries on copyright.

3. Formulation of Commercial Customs and Practices (paragraph 193). BIRBI has been and is in contact with the United Nations Economic Commission for Europe in relation to the work of formulating points to be covered in contracts transferring or licensing patented and non-patented technological know-how.

4. Approaches (paragraph 196 to 198). Generally, NIRPI's approach is world-wide. The Paris and Berne Conventions are open to any country in the world. Some of the Special Agreements existing under the Paris Convention are mainly used by certain countries but this has historical reasons; they are open to accession by any country party to the Paris Convention. However, some of the formulating work of BIRPI is expressly designed for developing countries. BIRPI's Model Laws fall into this category. They were drawn up with the advice of, and for use by, developing countries. A Protocol dealing with copyright law, submitted for adoption by the Diplomatic Conference of Stockholm next summer, would be open to developing countries only.

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5. Suitable Topics (paragraphs 203 to 207). There are several topics which BIRPI considers suitable for international regulation in the field of industrial property and copyright. Many of them could be normally dealt with in the course of the periodical revisions of the Paris and Berne Conventions and Special Agreements, mentioned above. Preparatory work on two other topics is well under way. One is the plan for concluding a multilateral agreement for facilitating the filing of applications for patents for the same invention in several countries and for facilitating the examination of such applications. The plan, commonly referred to as a plan for a Patent Cooperation Treaty ("PCT"), is described in our document PCT/INF/1 of which I enclose a copy in the present letter. It would bring about harmonization of conceptions in the patent field on several important points.

6. The other is the plan for concluding a multilateral treaty on the international classification of goods for the purposes of registering industrial designs.

7. Both treaties are expected to be established by diplomatic conferences within the next two years. It should be noted that both topics correspond to the two criteria described in paragraphs 203 and 204 of your Report: (i) they are in a technical branch of the law and of world-wide interest; (ii) there is an economic need - for the "PCT" a most urgent need - for them, and the unifying measures would have a beneficial effect on the development of international trade, since they would make protection of patents and industrial designs cheaper, quicker, and simpler, both for their owners and for the Government authorities which deal with the administration of industrial property laws.

8. It might be of interest to note that some of BIRPI's treaties had also the "radiation effect" described in paragraph 205 of your Report. For example, in the registration of trademarks, several countries follow the international classification of goods and services established for the purposes of such registration by an Agreement concluded in 1957 without being party to that Agreement.

9. Progress and Shortcomings of Present Work (paragraphs 208 to 210). It might be useful to note that BIRPI's efforts do not suffer, or suffer only to a very small extent, from the shortcomings enumerated in paragraphs 208 to 210 of your

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Report. In the whole history of BIRPI, there is only one draft treaty which has not yet culminated in an international conference (see paragraph 210(a)). Developing countries of recent independence (paragraph 210(b)) have been most active in BIRPI's activities; in the formulation of model laws, they participated without the participation of any developed countries. While it is true that BIRPI does not command "world-wide acceptance" (paragraph 210(c))- and in this, it does not differ from any other Organization, including the United Nations - it does have 82 Member States, which, as formulating agencies go, means that BIRPI's membership is larger than that of most other such agencies. (The number does not include territories, like the number quoted for the International Chamber of Commerce, but only sovereign States.) The statement that "none /of the formulating agencies/ has a balanced representation of countries of free enterprise economies, countries of centrally planned economies, developed and developing countries" (paragraph 210(c)), certainly does not apply to BIRPI since Bulgaria, Cuba, Czechoslovakia, Hungary, Poland, Romania, the Soviet Union, and Yugoslavia, are among its members, and since more than half of its members are "developing" countries according to United Nations criteria.

10. As far as co-ordination and co-operation among formulating agencies is concerned (paragraph 210(d)), BIRPI can see occasion for useful action by UNCITRAL. It is hoped that UNCITRAL will recognize BIRPI's general jurisdiction in its field, at least when activities are world-wide in their scope, and will assist it in its efforts to eliminate or prevent duplication by other agencies.

Role of the United Nations (UNCITRAL)

11. I believe that surveying by UNCITRAL of the field of the various international activities would be most useful (paragraph 215). BIRPI is ready to contribute within its competence to the accomplishment of such a task.

12. I believe also that UNCITRAL could perform a useful service in co-ordinating the work of organizations active in the trade law field and encouraging co-operation among them (paragraph 227(a)).

13. I believe that BIRPI's Member States, the overwhelming majority of which are Members also of the United Nations, would welcome and appreciate it if the United Nations would recommend the adoption of the treaties administered by BIRPI by countries not yet parties to them and the adoption of legislation by developing

countries on the basis of BIRPI's model laws (paragraph 227(b)). I believe that, in view of the great moral authority the United Nations has, such recommendations would be among the most useful contributions UNCITRAL could make to the promotion of the development of the law of international trade in the fields of industrial property and copyright.

14. While we would also welcome the promotion by the United Nations of the adoption of new treaties in our field (paragraph 227(c)), I do not see the usefulness of the United Nations itself taking over the role of "formulating agency" in the field of industrial property and copyright (paragraph 227(c)) or convening itself international conferences for the adoption of conventions in this field (paragraph 217). The present membership, and the composition of the membership, of BIRPI is sufficiently world-wide and representative of all tendencies to have a balanced view of existing needs; moreover BIRPI has already a very great experience in the field of its specialization.

INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Afro-Asian Organisation for Economic Co-operation

[Original text: English]

I have the honour to inform you that after extensive consultation with our constituent members, I am in a position to suggest that the following topics be added to those examples falling within the scope of the law of international trade:

(1) Quarantine Laws and Regulations;

(2) Trade Samples.

European Insurance Committee

[Original text: French]

As you know, the problems relating to insurance and reinsurance are already being studied by world-wide international organizations, and particularly within UNCTAD, with which our Committee has collaborated since its establishment; and we therefore think that the work which might be undertaken by UNCITRAL relating to insurance should not deal with the subjects that are on the programme of work of UNCTAD.

It seems to us that UNCITRAL, in view of the mandate which has been entrusted to it, might wish, in its work on insurance, to concentrate more particularly on laws and regulations relating to insurance contracts, i.e. on problems of private law. It must, however, be pointed out that it would in any case be premature and far too ambitious to aim at a general co-ordination on that subject at the present stage, since co-ordination of that kind is not likely to be achieved, even for a short time, in more restricted regional organizations such as, for Europe, the Organization for Economic Co-operation and Development or the European Economic Community. Moreover, as you very rightly state in your report A/6396/Add.1, it is a field in which the main principle should be the maintenance of the autonomy of the parties concerned in so far as this autonomy is not prejudicial to international trade.

It seems to us in any event necessary that the parties to international contracts of sale should retain the greatest freedom regarding the clauses of insurance contracts, so that they can make allowance for the particular circumstances of the individual commercial transactions thus effected. Moreover, it is only in so far as insurance contracts might affect the possible rights of third parties, and especially third parties who are the beneficiaries of insurance payments, that a possible co-ordination could be considered.

In practice, this problem of the rights and interests of third parties hardly arises except where questions of third-party liability are concerned; and it must be pointed out that, in this sector, efforts have been proceeding for a long time now, since a number of international Conventions, which have proved both useful and necessary in recent decades, have been concluded, in some cases many years ago, for carriage both by road and rail and by sea and air. In addition, new Conventions have been prepared quite recently in the new sector of the peaceful uses of nuclear energy.

We think that UNCITRAL might concentrate, in those parts of its programme relating to insurance, on problems of third-party civil liability; for instance, it might prepare a survey of existing International Conventions as well as a study of their contents in order, on the one hand, to see whether countries which have not yet ratified these Conventions could be invited to do so in the next few months or years, and, on the other hand, to study what changes, if any, should be made in these Conventions in view of the development of economic life in the world at large.

Inter-American Institute of International Legal Studies

[Original: English]

I. Introduction

The Inter-American Institute of International Legal Studies was established in 1964 principally for the purpose of ensuring sustained co-operation among Western Hemisphere professors and specialists, for intensive study and research and for improvement of the teaching of public and private international law, including international legal problems, in connexion with economic and social development and scientific and technical progress.

The Institute has since its inception concentrated its research and publications activities on the legal aspects of regional economic integration in Latin America, comprising the two parallel processes of the Central American Common Market (CACM) and the Latin American Free Trade Association (LAFTA). In this context, international trade law occupies a prominent position, and indeed lies at the core of economic integration, which at the outset is but a scheme for intensification of intrazonal trade. Fully aware of this situation, the Institute has sponsored a series of meetings, attended by prominent jurists of the Americas, in order to explore the juridical and institutional issues related to the two processes of economic integration.

II. Past activities of the Institute in this field

(a) Miami Seminar

The first of these meetings was a Seminar on Legal and Institutional Aspects of Central American Integration, held at the Center for Advanced International Studies, University of Miami, from 17 to 21 August 1964.

The agenda of the Seminar focused in particular on an examination of the existing legal orders in the states of the Central American common market zone, with a view to determining in what subjects measures of unification or harmonization were required and advisable, and to the preparation of a plan of systematic research and study of the subjects that were to be selected as a result of this exploration.

Under the general heading of Commercial Law, the Miami Seminar examined the following subjects: transportation, rules governing commercial enterprises, negotiable instruments, insurance, patents and trademarks, and maritime law.

As regards transportation, the Seminar felt it necessary to make a study of transportation contracts, which might lead to the drafting of a uniform law as well as to other aspects of the subject, with a view to establishing a legal system that would aid in the solution of the problems of land transportation arising from economic integration. The study would be partly directed towards the preparation of draft instruments tending to unify or at least harmonize the legal and administrative provisions of the five CACM countries (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua), which would thereby be liberalized.

As to the preparation of a draft uniform law on transportation contracts, the Seminar noted that the existence of various concepts regarding the legal nature of such contracts (contractual, property rights and a hybrid system) led to the existing uncertainty as to the rights of the parties and of third persons, especially when the latter appear as purchasers of goods or as pledge creditors. These and similar problems deriving from the legislative diversity prevailing in Central America have hindered operations within the common market. With respect to other legal problems affecting transportation within the area, on the solution of which would depend the liberalization of intrazonal transportation regulations, the Seminar also noted that in the draft regulations then being prepared by the Permanent Secretariat of the General Treaty for Central American Economic Integration (SIECA) for the Uniform Central American Tariff Nomenclature (CAUCA), requirements were to be established for the land bill of lading and the ocean bill of lading.

With reference to the two connected subjects of commercial companies and negotiable instruments, the Seminar took into account the lack of any Central American instruments governing the matter, as well as of any official research or study on the subject, apart from a Round Table which had been held in June 1964 under the sponsorship of the Central American Institute of Comparative Law, at which certain recommendations were adopted regarding principles which should be included in a "Uniform Central American Negotiable Instruments Law". As to commercial companies, it was stressed that this process of economic integration requires a revision of the restrictive concepts of commercial activities, especially in regard to corporations, while maintaining the principles that protect the interests of shareholders and outside creditors.

Particular attention was devoted by the Seminar to the urgent need for a detailed study of the legal provisions regulating multinational enterprises, the importance of which for economic integration was reaffirmed. In short, the Miami Seminar emphasized the great need for comparative studies of the legal systems in Central America governing companies, including foreign ones, and negotiable instruments, such studies to be undertaken with a view to the attainment, if not of uniform legislation, at least of the highest possible measure of harmonization.

With reference to the important and complex question of the legal regulation of insurance, the Seminar considered the total absence of any Central American

instruments of studies on the subject, although it lends itself to a common regional approach, and recommended the preparation of a study on the general topic of insurance, including reinsurance.

Within the realm of general private international law, the Seminar considered such topics as the reservations made by some Central American countries to the Bustamante Code, which curtail the effectiveness of the rules therein stated for the solution of conflicts of law; the procedures governing the making and legalization of powers of attorney, with due regard to the Protocol on Uniformity of Powers of Attorney signed in 1940, but not yet ratified by all Central American countries; and the desirability of the preparation of a study concerning the requirements and procedures for the execution of foreign judgements, with a view to the possible subsequent drafting of a regional instrument aiming at the unification or the greatest possible uniformity in the pertinent legal rules.

Finally, the Seminar took into account the studies then already under way by various Central American integration agencies in fields connected with that of international trade law, to wit: (a) patents and trademarks (industrial property) - CIECA was preparing a draft convention on trademarks, patents, industrial designs and models; (b) maritime and port law - while ECLA prepared a draft uniform law on maritime law, pending consideration by the Committee on Economic Cooperation of the Central American Isthmus, the National Commissions of the Central American Economic Council were studying a draft Maritime Code as well as a draft Port Code; (c) banking and financial law - in addition to the several instruments already signed or in force in the area regarding this subject, the Committee on Legal Studies of the Central American Monetary Board was making a report on the situation of regional institutions in the fields of financial, monetary and banking law, with a view to undertaking a comparative study of banking legislation.

(b) Montevideo Seminar

From 18 to 22 October 1965, the Institute convened in Montevideo a second Seminar, on Legal and Institutional Aspects of the Latin American Free Trade Association (LAFTA), which was to explore within the South American context more or less the same issues that the Miami Seminar had studied with reference to Central America, i.e., the problems of an institutional nature with reference to LAFTA, and those arising from the necessity or advisability of assimilating th

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national legal systems prevailing in the LAFTA area, by unifying or harmonizing those branches of municipal law most closely related to economic integration.

Among the questions, indirectly related to international trade law, that were considered by the Montevideo Seminar, is one of the most important problems of contemporary general international law in its relation with municipal law, namely, how to overcome the current domestic provisions that constitute obstacles to the executory force of decisions of the organs of LAFTA. In other words, how to determine what procedures might be adopted by the member States of LAFTA in order that the norms established by treaties or other contractual instruments as well as decisions and agreements adopted by its organs, could become a part of the internal law of each of these States, and if they did, what would be their relative hierarchical position. The problem presents as many administrative as properly legal implications. Given the fact that in this phase LAFTA may be largely regarded as an organization for liberalization of intrazonal trade, the problem is in essence that of giving greater effect to international trade law.

On this subject, the Seminar agreed that a detailed study should be made of the possibilities for institutional strengthening of LAFTA - including the advisability of establishing a jurisdictional organ competent to hear controversies arising over the interpretation or application of the Treaty of Montevideo (1960) - with a view to filling the gaps and deficiencies that might be noted both in the structure and functioning of the organs of LAFTA as well as in the domestic methods and procedures of the member States. These, it should be noted, now include Mexico and all of the Republics of South America, totalling eleven States.

The Seminar further recognized the need for an attempt to unify or harmonize domestic laws only in those matters in which the existing diversity of laws might unfavourably and seriously affect the possible future development of the process of regional economic integration. The Seminar considered that the task of "legal integration", as it may be termed, should include the creation of those substantive and procedural rules that would help fill gaps not necessarily caused by legislative diversity, but rather by new legal relationships peculiar to the process of integration. In particular, the Seminar selected, for inclusion in the proposed plan for study and research, the following topics related to international trade law: (a) instruments regulating foreign trade; (b) laws affecting transportation; (c) industrial property; (d) certain aspects of commercial law.

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The Seminar gave priority to research and study related to the legal and administrative systems of foreign trade regulation in LAFTA member countries, in order to identify the rules, practices and procedures which constitute obstacles to trade in the area. The Seminar took into account the fact that the work programme of LAFTA, and in particular that of its Advisory Committee on Customs Matters and on Commercial Policy, included studies on this topic, and that certain preliminary conclusions and recommendations had already been made.

With reference to the legal regulation of transportation, a capital concern of LAFTA, the Committee also agreed to grant priority to its study, with a view to the facilitation of transportation within the area, and especially considered the need to make uniform, simplify and codify legal and regulatory provisions concerning the maritime, river and lake transportation of the LAFTA countries. The Committee considered it equally important to study the necessary measures for the facilitation of freedom of movement of persons, especially industrialists and businessmen, within the free trade area.

In the field of industrial property, the Seminar further agreed to give priority, within the proposed research and study plan, to the preparation of drafts of legal instruments capable of overcoming the highly uncertain legal situation prevailing on the subject in LAFTA countries, owing to the multiplicity of regional and world-wide agreements applicable to different countries but lacking in adequate international protection of their trademarks, patents, etc. The preparation of new instruments would require the revision of existing agreements as well as of the pertinent legislation of the LAFTA member States, with a view to the identification of a common denominator of principles which would pave the way for an acceptable degree of legislative harmonization.

The Seminar attributed a lesser priority to the study, which however it deemed it advisable to undertake as soon as possible, of certain aspects of commercial law, such as forms of business organization, commercial obligations and contracts, etc.

(c) Other meetings

In addition to these Seminars that the Institute itself sponsored - and there were several others not directly related to international trade law - it participated in other technical meetings dealing with different aspects of this

subject. Thus, the Institute was represented at a meeting of Latin American jurists held in Buenos Aires from 13 to 15 October 1966, under the auspices of INTAL, the Institute for Latin American Integration (an affiliate of the Inter-American Development Bank), for the purpose of studying a draft Uniform Law on Negotiable Instruments for Latin America. The meeting was attended by thirty-four leading lawyers and professors of law, nine of whom presented papers. There was unanimity at the meeting regarding the need for the adoption of such a uniform law, and INTAL was entrusted with the responsibility of preparing its final text.

Furthermore, the Inter-American Institute of International Legal Studies gave substantial assistance to a meeting organized in Tegucigalpa, Honduras, in 1966, by the Central American Institute of Comparative Law, and convened with a view to the study of a draft Uniform Law on Negotiable Instruments for Central America.

Finally, the Inter-American Institute commissioned, with the co-operation of the International Bank for Reconstruction and Development, a paper on "Multinational public enterprises", written by Dr. Carlos Fligler, of the Legal Department of the Bank, released in mimeographed form (175 pages) in June of 1967, and which constitutes an examination in depth of the legal regulation of such enterprises.

III. Conclusion

The deliberations of the meetings sponsored by the Inter-American Institute of International Legal Studies start from the realistic premise that there is a close link between international trade law and the underlying legal foundations of regional economic integration. In view of the fact that there is a growing trend towards integration throughout the developing world, it would seem proper that such a body of world-wide scope as the new United Nations Commission on International Trade Law (UNCITRAL) should seek to study how to reconcile the legal framework of world trade, on a universal scale, with these regional arrangements focusing on intrazonal trade, with their peculiar legal characteristics of a local or regional character.

A summary of the recommendations of the Seminars of Miami and Montevideo, concerning respectively integration within the Central American Common Market and

LAFTA, would yield the following results as regards topics deemed worthy of priority for further study by UNCITRAL, schematically presented:

A. Central America:

1. Transportation law concerning carriage of goods - need for uniform laws governing (i) land transportation contracts and bills of lading and (ii) ocean bills of lading; also (iii) maritime law (maritime code and maritime port code).

2. Commercial law - need for harmonization of negotiable instruments law.

3. Legal status of multinational enterprises.

4. Harmonization of insurance and reinsurance laws.

5. Private international law - (i) question of the status of reservations to the Bustamante Code, (ii) uniform procedures for power of attorney, and (iii) uniform execution and enforcement of foreign judgements.

6. Harmonization of industrial property law - legal questions related to patents and trademarks.

7. Harmonization of banking and financial law (notably bankers' commercial credits; also the legal status of foreign banks and investment companies).

B. South America and Mexico (LAFTA):

1. Harmonization of national legislation regulating foreign trade (e.g., normalization of export documents, etc.).

2. Harmonization of waterborne transportation law concerning carriage of goods (maritime, river, lake).

3. Industrial property law - patents and trademarks.

4. Harmonization of laws governing the free international movement of persons.

5. Harmonization of negotiable instruments law.

IV. Recommendation

It was seen in the preceding section that the specific recommendations of the two Seminars, taken in the aggregate, attribute priority to the general topics of transportation law, industrial property law, certain aspects of commercial law (with special reference to national documentary foreign-trade requirements and negotiable instruments), the legal status of multinational enterprises, and, finally, certain questions of private international law, which however, do not specifically fall within the purview of UNCITRAL.

In addition, the General Secretariat of the Institute is of the opinion that the following item should also be included in the agenda of the Commission on a priority basis, in view of its universal interest and practical application, especially to the situation of the developing countries, which include the entire Latin American region.

Analytical survey and evaluation of multilateral treaties and other international agreements now in force on substantive subjects of international trade law, with a view to their topical revision, and possibly drafting of new conventions under United Nations auspices, (without prejudice to regional conventions to be concluded under the auspices of regional organizations), as appropriate; the principal topics to be covered would be the following:

(1) industrial property;
(2) Multinational enterprises;
(3) waterborne transportation;
(4) international commercial arbitration; and
(5) the international sale of goods.

International Association for the Protection of Industrial Property

[Original: English]

4. International unification and harmonization of the law of industrial property has been a continuing process since 1883 when the Paris Convention, establishing a Union for the International Protection of Industrial Property, had been concluded. This Convention originally between a small number of countries is now a Treaty to which seventy-eight countries have adhered. The Convention and certain Arrangements attached to it contain a substantial number of stipulations, the object of which is to harmonize and unify the law of the various countries on a number of subjects. These stipulations, when non-self-executing international legislation, have also had the effect of causing member countries to amend their own law and harmonize the same to a substantial degree.

5. As you also appreciate, the field of industrial property is one in which, while there is an identity between certain basic concepts underlying such law, it is also one in which significant divergencies exist. These result from traditional

or philosophic differences in resolving the conflicts of interests, claims and demands pressing upon the legal order, and the attempts to reconcile such conflicts and satisfy the whole scheme of interests involved.

6. In view of this, a complete unification of the law in the sense of having a world law on patents, trademarks, designs, trade names and unfair competition is well-nigh impossible. This law is also too closely attached to the civil law, civil procedure, commercial law, criminal law, and criminal procedure of the various States. These branches of the law must first be unified, if it were ever possible to do so, before we can have a complete international law on industrial property. Even the countries which have the same legal traditions, such as the British law countries and Latin American countries, have substantial differences in their industrial property law.

7. All law, and therefore industrial property law, is composed of various elements; legislative acts and administrative regulations; Court decisions interpreting and applying such acts and regulations; traditional techniques in handling legal materials; and basic ideas and ideals which nourish the texts and make them alive. An international code of industrial property law can only possibly deal with the first element.

8. Therefore, the desirable and possible goal is a gradual harmonization of industrial property law with regard to such matters that enable international trade to be carried on with the least possible conflict and waste.

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9. Our Association, ever since its creation at the end of the last century, has been concerned with the finding of harmonious solutions of conflicting national views through periodic meetings of experts representing a large number of countries of different economic structures and differing national traditions. It is these solutions reached by our Association which led to the successive revisions of the Paris Convention. The work of this gradual and progressive harmonization and unification of the law has required scholarship and efforts of vital character, and we can say that the Association was able to accomplish this work through the co-operation of the most eminent national and international jurists and experts in this field.

10. The result today is that we have in the Paris Convention, as last revised in 1958, what constitutes in effect international legislation in the field of industrial property, and an international legislation in force as between seventy-eight countries. It is evident that the work of future harmonization and unification will necessarily be pursued by our Association and by further revisions of the Paris Convention.

11. To refer again to paragraph 227 of the Report of the Secretary-General, we submit that UNCITRAL may accelerate harmonization and unification of the international law in the industrial property field first and foremost by promoting a wider participation in the existing Paris Convention by the adherence thereto of Member States of the United Nations which have not yet so adhered.

12. Certainly also UNCITRAL may promote and co-ordinate efforts at uniformity of law on a regional basis among countries which, due to common legal traditions and basic general law and also to similar social and economic conditions, may be led to adopt uniform laws. Examples of such efforts are: the common patent, design and trademark legislation adopted by the twelve States of the African and Malagàsy Organization; the preparation of uniform patent, trademark and unfair competition legislation by the four Scandinavian countries; the drafting of uniform patent and trademark Convention Laws by the Common Market countries; and the Convention-making process of the Council of Europe on special subjects of patent law and procedure.

13. It would seem to be within the scope of practicality to have the East African States of Kenya, Uganda, Tanzania and others, and the West African States of Ghana, Nigeria, Gambia and Sierra Leone, adopt uniform laws since basically their present laws do not differ greatly. The same possibility exists, although it would be a much harder task, for the Latin American countries or at least some of them.

14. As the Report of the Secretary-General points out, BIRPI, the International Bureau of the Paris Union, has prepared Model Laws on Patents and Trademarks for Developing Countries. These have been adopted, indeed, at meetings of experts of developing countries. Certainly, UNCITRAL could promote the adoption of uniform laws in the regions indicated above on the basis of these Model Laws.

15. It is submitted that these are the lines along which UNCITRAL might exercise its efforts with the hope of accomplishment.

/...

16. We believe that UNCITRAL should not attempt to formulate or promote the adoption of new International Conventions or Model Laws on industrial property. Such attempt would constitute duplication and would create confusion with the work being done through the existing Paris Convention, and through the efforts of BIRPI which is particularly competent in this field, and may draw upon its experience and studies for three quarters of a century.

International Chamber of Commerce

[Original: French]

As you know, the International Chamber of Commerce (ICC) welcomed the creation of this new body by adopting a resolution in which it expressed the hope that economic circles might be associated with the work of the United Nations Commission on International Trade Law (UNCITRAL), just as they are, for example, with that of the Economic and Social Council and the United Nations Conference on Trade and Development. It was therefore pleased to note the terms of General Assembly resolution 2205 (XXI) and of the Secretary-General's letter of 13 March 1967.

In our desire to see a successful co-ordination of activities in the fields of law and practice, affecting international trade, we considered it necessary to emphasize the importance of co-operation with the private sector. We have done so because we believe that heads of enterprises have a particular competence in the matter in question from daily experience and could undoubtedly make a constructive contribution to the task of UNCITRAL. We also think that, for some aspects of the subject-matter simple private codification of current practice would best serve the general interest. Codification presents the advantage over uniform legislation or international conventions that it has the flexibility required to adapt itself to the almost constant evolution of the structure of trade. The practically universal acceptance of the "Uniform Customs and Practice for Documentary Credits" shows that the approach adopted in those rules corresponded to practical requirements and a similar line of reasoning could be followed with regard to the terms of trade. In any case, it seems to us that from every point of view maximum flexibility should be maintained in the "law of international trade", in order best to preserve the degree of individual initiative and freedom of action that the trader must have in contractual matters.

Apart from that consideration, it also appears that a large proportion of the present conflicts in legislation so harmful to the expansion of world trade could be avoided if some of the existing international conventions on uniform regulation were more widely accepted. We regard that as an essential element of the problem to be solved, as described by the Secretary-General in his report to the General Assembly, and we are thinking especially of the Conventions signed at The Hague in 1964 relating to a Uniform Law on the International Sale of Goods (Corporeal Movables) and the Formation of Contracts. As Professor Schmitthoff has pointed out, the diversity of national legislation in this field is so great that it constitutes one of the most serious problems at the present time. By promoting those two Conventions on uniform legislation, UNCITRAL would enable countries which have recently acceded to independence to become familiar with an eminently useful enterprise in which they could not participate because it represents the work of many years.

Similarly, there is no doubt in our opinion that, for example, if the Conventions of 1930 and 1931 on the unification of the law relating to bills of exchange were more widely applied, they would greatly contribute to the progress of UNCITRAL's mission.

International Chamber of Shipping

[Original: English]

As the Commission will be aware, there has been considerable progress in unification of maritime law during the last seventy years. During this period the Comité Maritime International (CMI) has promoted some fifteen Conventions which have been accepted at various Brussels Diplomatic Conferences, the latest of which was held in May this year. In addition to the Conventions already adopted, there is the likelihood of an early protocol to one of them and preliminary work is being undertaken on further Conventions.

It will be seen that, as far as the maritime law part of international trade law is concerned, considerable progress has been made by existing institutions and it would therefore not seem necessary for any aspect of maritime law to receive priority in UNCITRAL's studies. There might, however, be scope for encouraging additional countries to adopt those Conventions which have already been found valuable and effective in practice.

International Law Association

[Original: English]

As is pointed out in the report of the Secretary-General, documents A/6396 and Add.1 and 2, the law of international trade has been subject to many international conventions, some of which have been of great value to the community at large.

At the present time many international organizations are engaged on work on special sections of this law, and it seems to us that, in order to avoid duplication, it would be preferable to leave such work to these specialized organizations. As a good example of this, we should leave Copyright Law and the problems connected therewith to the International Union for the Protection of Literary and Artistic Works which is currently holding, in Stockholm, a diplomatic conference on the revision of the Berne Convention.

Similarly, maritime law in general should be left to the Comité Maritime International, although, in certain cases, other international organizations might also make valuable contributions in analysing particular problems in this field. As an example of this we would mention that the International Law Association has undertaken the task of studying the question of discrimination in international transport.

In answer to your query as to topics and priorities, we would suggest the following subjects in this order of priority:

(1) Negotiable instruments and bankers' commercial credits;

(2) Insurance;

(3) Agency arrangements;

(4) Exclusive sale arrangements;

(5) Laws relating to the conduct of business activities pertaining to international trade.

All these subjects are rather difficult, but we are fully confident that the United Nations could do extremely valuable work by fostering and sponsoring research in these fields; this, of course, would be the first step to the preparation of international conventions.

International Rail Transport Committee

[Original: French]

It is not for a specialized organization such as the International Rail Transport Committee (CIT) to state its views on the fundamental problems posed by the establishment of this new commission. We shall therefore limit our comments mainly to considerations of transport law. We should like to point out, however, that active collaboration by the United Nations with existing organizations might provide a welcome stimulus to the unification of private international trade law.

Railway transport law was the subject of one of the first international codifications on the European continent. The International Convention Concerning the Carriage of Goods by Rail (CIM) dates from the end of the nineteenth century, while the International Convention Concerning the Carriage of Passengers and Luggage by Rail (CIV) was concluded in 1924. Both are subject to periodic revision. Since last year, the CIV was supplemented by a Convention concerning the liability of the railways for the death of, or injury to, passengers. These conventions are being applied by an increasing number of States in Asia and Africa. Most of their provisions establish a uniform legislation for international transport and the remainder deal with the settlement of conflicts of laws. It should be added that they have also contributed greatly towards a certain measure of unification of national legislations.

For its part, CIT, as a non-governmental organization consisting of the railway administrations which apply the CIV and the CIM, aims at developing international railway transport law on the basis of these Conventions as well as the uniform settlement of other questions relating to international transport law. For more than half a century, it has been helping to establish the necessary implementation provisions for the application of the Conventions.

At present, the unification of international railway transport law may be considered to have been largely achieved in Europe. The problem now is to extend the geographical field of application of the existing Conventions. With the development of the mixed transport of goods by rail and sea by means of transcontainers, the accession to the CIM even of States on the American continent or of other overseas countries may be envisaged.

Another task appears to be urgent: to achieve as great a measure of unification as possible of legislations governing the various modes of transport, starting with the problem of liability. A healthy transport policy, in fact, requires such equality of treatment.

The new United Nations Commission would therefore do extremely useful work in the field of international transport legislation by supporting the efforts of the Central Office for International Railway Transport and of CIT to extend the sphere of application of the existing Conventions and by endeavouring to approximate as far as possible the legal regulations for the different modes of transport.

International Savings Banks Institute

[Original: English]

In some countries, notably in Germany, Italy, Scandinavia and Austria, important Savings Banks or Savings Banks' central financial institutions (the so-called Savings Banks Central Banks) participate regularly and importantly in credit operations on the international level, this on the basis of the 1962 revised "Uniform Customs and Practice for Documentary Credits" or similar rules. These seem to give full satisfaction in their sphere of application.

The recent initiatives of among others the United Nations Centre for Housing, Building and Planning, have nevertheless stressed the need for a more harmonious adjustment of the national legal requirements on the subject of negotiable instruments which can be regarded as complementary to pure trade instruments, notably short- or medium-term credit lines, seed-capital operations, etc., which are trade inducing.

Though being outside the strict traditional definitions of the jus mercatorium as such and thus perhaps outside the scope of the Commission's work in its early stages, a study of and possible recommendations on the inhibiting nature of the now applicable statutory limits on investment and tending of near-banking, financial institutions, would seem to be of great potential benefit to the trading communities of both developed and developing countries alike.

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International Union for Inland Navigation

[Original: English]

1. In reply to your said letter, our organization would like to limit her comments to the subject:

(e) Transportation

.....

(IV) Carriage of goods by inland waterways

2. As the physical conditions of this activity, its state of development, the economic and political conditions vary vastly throughout the world, we would suggest that unity would be promoted not at once on a world-wide basis, but rather, as a first step, by way of groups of commercially inter-linked nets of waterways.

3. As regards Europe a uniform contract of carriage by inland waterways has been set out by praticians and lawyers from 1961 to 1964 for the Rhine and the inland waterways connected with it.

A copy of same is hereby added. Its use has been recommended to all inland waterways carriers by our organization and by the Consortium of Rhine Navigation. It is at this time, together with a treaty drafted by the Unidroit (Rome) the object of studies undertaken by a specialized body of the European Economic Community in order to establish uniform rules of carriage by inland waterways in the Common Market.

4. The difficulties encountered in setting up such uniform rules even for a relatively small community have convinced us of the necessity to proceed first on what may be termed a "local" basis rather than of attempting the same on a world-wide basis.

ANNEX I

LIST OF ORGANS AND ORGANIZATIONS INVITED TO SUBMIT COMMENTS ON THE WORK PROGRAMME OF THE COMMISSION

United Nations Organs and Offices

Department of Economic and Social Affairs
Economic Commission for Africa
Economic Commission for Asia and the Far East
Economic Commission for Europe
Economic Commission for Latin America
United Nations Conference on Trade and Development
United Nations Industrial Development Organization
United Nations Institute for Training and Research

United Nations Specialized Agencies and Related Organizations

Food and Agriculture Organization of the United Nations
General Agreement on Tariffs and Trade
Inter-Governmental Maritime Consultative Organization
International Atomic Energy Agency
International Bank for Reconstruction and Development
International Civil Aviation Organization
International Monetary Fund
International Labour Office
International Telecommunication Union
United Nations Educational, Scientific and Cultural Organization
Universal Postal Union
World Health Organization
World Meteorological Organization

Other Inter-governmental Organizations

African Development Bank
Asian African Legal Consultative Committee
Asian Development Bank
Bank for International Settlements
Benelux Economic and Social Consultative Council
Central American Research Institute for Industry
Central Commission for the Navigation of the Rhine
Central Office for International Railway Transport
Council for Mutual Economic Assistance
Council of Europe
Customs Co-operation Council
Danube Commission
East African Common Services Organization
Euratom
European Coal and Steel Community
European Conference of Ministers of Transport
European Economic Community
European Free Trade Association
European Investment Bank
General Treaty on Central American Economic Integration
Hague Conference on Private International Law, The
Inter-American Development Bank
Intergovernmental Copyright Committee
International Institute for the Unification of Private Law
International Patent Institute
International Union for the Publication of Customs Tariffs
United International Bureaux for the Protection of Intellectual Property
Latin American Free Trade Association
Latin American Institute for Economic and Social Planning
League of Arab States
Nordic Council

Organisation for Economic Co-operation and Development
Organization for the Collaboration of Railways
Organization of African Unity
Organization of American States
Organization of Central American States
Organization of Petroleum Exporting Countries
Benelux Economic Union

Non-Governmental Organizations in Consultative Status with the Economic and Social Council

Category A

International Chamber of Commerce
International Confederation of Free Trade Unions
International Federation of Agricultural Producers
International Federation of Christian Trade Unions
International Organization of Employers
World Federation of Trade Unions

Category B

Afro-Asian Organisation for Economic Co-operation
European Insurance Committee
Federation of Commonwealth Chambers of Commerce
Inter-American Council of Commerce and Production
International Air Transport Association
International Association for the Protection of Industrial Property
International Association of Ports and Harbours
International Automobile Federation
International Bar Association
International Commission of Jurists
International Institute of Public Finance
International Law Association
International Organization for Standardization

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International Road Federation

International Road Transport Union

International Union for Inland Navigation

International Union of Marine Insurance

International Union of Official Travel Organizations

International Union of Producers and Distributors of Electrical Energy

International Union of Public Transport

International Union of Railways

Latin American Iron and Steel Institute

Register

Institute of International Law

International Aeronautical Federation

International Association for Mass Communications Research

International Association for the Promotion and Protection of Private Foreign Investments

International Association of Legal Science

International Cargo Handling Co-ordination Association

International Chamber of Shipping

International Confederation of Societies of Authors and Composers

International Council of Commerce Employers

International Dairy Federation

International Economic Association

International Federation of Cotton and Allied Textile Industries

International Federation of Independent Air Transport

International Federation of Workers' Travel Association

International Fiscal Association

International Literary and Artistic Association

International Marine Radio Association

International Organization of Consumers Unions

International Permanent Bureau of Automobile Manufacturers

International Prevention of Road Accidents

International Radio and Television Organization

International Savings Banks Institute

International Shipping Federation Ltd., The

International Union of Aviation Insurers

Joint International Committee for the Protection of Telecommunication Lines and Ducts

Other Non-Governmental Organizations

Hemispheric Insurance Conference

Inter-American Bar Association

Inter-American Commercial Arbitration Commission

Inter-American Institute of International Legal Studies

International African Law Association

International Association for the Teaching of Comparative Law

International Association of Comparative Law

International Banking Research Institute

International Copyright Society

International Juridical Organization for Developing Countries

International Latin Institute of Commercial Law

International Law Center

International Maritime Committee

International Rail Transport Committee

Law Association for Asia and the Western Pacific

Liaison Group for the European Engineering Industries
