

the issues raised by its proposal and entitled "Employee Participation and Company Structure in the European Community" (Bulletin of the EC Supplement 8/75). The proposal is at present before the Legal Affairs Committee of the European Parliament.

14. CEC has made an amended proposal for a Seventh Council Directive on consolidated accounts (O.J. No. C 14 of 17 January 1979). It is at present under discussion in the Council of EC.

15. CEC has made an amended proposal for an Eighth Council Directive on the authorization of persons responsible for carrying out statutory audits (O.J. No. C 317 of 18 December 1979). It is at present under discussion in the Council of EC.

16. CEC has prepared a Draft Convention on the international mergers of public limited liability companies (Bulletin of the EC Supplement 13/73). It is at present being discussed by the Member States of EC.

C. Trade marks

17. CEC has made a proposal for a Council Directive to approximate the laws of the Member States relating to trade marks, and a proposal for a Council Regulation on the Community trade mark. These have been discussed by the Economic and Social Committee and have been laid before the European Parliament for debate.

B. Report of the Secretary-General: question of co-ordination: direction of the work of the Commission (A/CN.9/203)*

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* 13 May 1981. Referred to in Report, paras. 39, 88 (part one, A, above).

INTRODUCTION

1. The General Assembly in resolution 2205 (XXI),* by which the United Nations Commission on International Trade Law was established, gave the Commission the mandate to co-ordinate legal activities in the field of the unification and harmonization of international trade law. This mandate was recently re-affirmed in resolutions 34/142** of 17 December 1979 and 35/51*** of 4 December 1980.

2. In paragraph 5 (b) of resolution 34/142 the General Assembly requested the Secretary-General to place before the Commission, at each of its sessions, a report on the legal activities of the international organs, bodies and organizations concerned, together with recommendations as to steps to be taken by the Commission to fulfil its mandate. At this session the Commission will have before it a report on the work of other organizations engaged in the field of international trade law.¹

3. The Secretariat was of the view that it might be an appropriate time to set out the various approaches taken by the Commission in fulfilling its mandate given by the General Assembly. Accordingly, the present report in part two describes in brief the work undertaken by the Commission, emphasizing, however, the role of co-ordination in that work. It was believed that the Commission would be able to engage in meaningful consideration on the question of co-ordination with this information available. Part one describes the mandate of the Commission as the central organ in the United Nations for the unification and harmonization of international trade law. Part three discusses relevant questions of methodology.

PART I. THE MANDATE OF THE COMMISSION

4. During the consideration by the Sixth Committee of the draft resolution which eventually was adopted as resolution 2205 (XXI) it was recognized that a large number of organizations and bodies both within and without the United Nations were already engaged in formulating texts on international trade law.² In some

cases these formulating agencies were restricted to a particular subject matter, such as maritime law in the case of the Inter-Governmental Maritime Consultative Organization. Other formulating agencies which had a broader subject matter competence did not command world-wide acceptance. They did not have balanced representation of countries of market economy and of centrally planned economy, or of countries with developed and developing economies. In some cases, those agencies had a membership confined either to countries of centrally planned economy (e.g. the Council for Mutual Economic Assistance (CMEA)) or to participants from countries of market economy (e.g. the International Chamber of Commerce (ICC)); in other instances, members came only from a specific region (e.g. the Economic Commission for Europe (ECE)). In the case of the International Institute for the Unification of Private Law (UNIDROIT), although there was no geographical limitation on membership, the membership was predominantly European.

5. Experience showed that texts were seldom adopted by countries which had not participated in the work of a particular formulating agency, and too often were not adopted even by those countries which had participated in the work. There was a great disproportion between the number of draft instruments prepared by formulating agencies and their acceptance by States. Moreover, the lack of co-ordination among the formulating agencies led to the elaboration of texts on similar subjects with inconsistent rules. The result was a duplication of effort and confusion as to the law applicable to particular transactions.

6. It was expected that a commission of the United Nations specifically concerned with the harmonization and unification of international trade law would improve the situation. The Commission would have a broad competence as to subject matter and its membership would consist of States from the various legal, economic and social systems making the results of its work more acceptable throughout the world.

7. It was not expected that the work of the new commission would reduce the usefulness of the existing formulating agencies. Rather, it was expected that United Nations' interest and participation in this work through the new commission would tend to broaden the scope of the existing agencies and enhance their activities. Texts which had been formulated and were already in use within a region or among certain States might be recommended for use on a global level. In some cases, the Commission might recommend to a formulating agency that it undertake certain work because of its acknowledged expertise. In other cases, the Commission might be requested by a formulating agency to undertake the work itself because it would be a more appropriate forum for the particular problem.

* Yearbook . . . 1968-1970, part one, II, E.

** Yearbook . . . 1980, part one, I, C.

*** Yearbook . . . 1980, part one, II, D.

¹ A/CN.9/202 and Add.1 and 2 (reproduced in this volume, part two, V, A). See also Report of the United Nations Commission on International Trade Law on the work of its thirteenth session, *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17)*, para. 150 (Yearbook . . . 1980, part one, II, A).

² The discussion in part one is a summary of the Report of the Secretary-General, "Progressive development of the law of international trade", *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, (A/6396), paras. 208-234 (Yearbook . . . 1968-1970, part one, II, B).

8. With these considerations in mind, the General Assembly indicated a wide range of activities to be undertaken by the Commission in fulfilling its mandate to "further the progressive harmonization and unification of the law of international trade". In resolution 2205 (XXI), Section II, para. 8, the Commission, in addition to preparing new international conventions, model laws and uniform law, was called on to:

- (a) Co-ordinate the work of organizations active in this field;
- (b) Encourage co-operation among them;
- (c) Promote wider participation in existing international conventions;
- (d) Promote wider acceptance of existing model and uniform laws;
- (e) Promote the adoption of new international conventions and model and uniform laws;
- (f) Promote the codification and wider acceptance of international trade terms, provisions, customs and practices;
- (g) Promote ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of international trade law;
- (h) Collect and disseminate information on national legislation and modern legal developments, including case law, in the field of the law of international trade.

PART II. ACTIONS TAKEN BY THE COMMISSION

9. The report of the first session of the Commission shows that

"There was general recognition that the establishment of the Commission marked the opening of a new and important chapter in the progressive harmonization and unification of the law of international trade. The Commission, whose membership reflected the principal economic and legal systems of the world and the developed and developing countries, was considered to be most suited for the purpose of eliminating divergencies between national systems of law which formed barriers to the development of international trade. While the work facing the Commission was considerable, both in scope and complexity, there were a number of encouraging factors. The unanimous adoption by the General Assembly of resolution 2205 (XXI), which established the Commission, augured well for the work of harmonization and unification. The hope was expressed, by a number of representatives, that out of the co-operative endeavours of the Commission and of other bodies active in the field, a

new *lex mercatoria* would in time evolve reflecting the interest of the entire international community."³

10. The co-operative endeavours of the Commission to bring about the harmonization and unification of international trade law fall into two major divisions. The first has to do with the elaboration and promotion of specific texts dealing with international trade law. The second involves a programme of information and publication to disseminate knowledge of the current status of international trade law. These two major divisions of the work will be dealt with in turn.

A. Elaboration and promotion of texts

11. Although the General Assembly had given the Commission the mandate to promote the harmonization and unification of international trade law and had authorized it to employ a number of different techniques to fulfil that mandate, it was up to the Commission itself to decide on the manner in which it would proceed. At the one extreme the Commission could have turned its attention exclusively to the preparation of new texts in fields where no text existed at a universal level or to the revision of existing texts which were considered to be out of date. On the other hand the Commission could have considered itself to be a policy making body, leaving the preparation of legal texts to other formulating agencies. The most ambitious proposal of this nature was put forward by the delegation of France.

"Rather than actually drafting texts, UNCITRAL would have the task of approving texts drafted elsewhere, although perhaps on UNCITRAL's initiative and its suggestion . . .

"The regulations approved by UNCITRAL could, of course, be highly varied in form and substance. Sometimes it would approve actual laws with specific detailed provisions; sometimes it would approve mere principles for States to apply; and sometimes it would simply be a matter of definitions to elucidate the meaning and scope of various terms. Every kind of formula can be utilized in reconstituting a common body of law."⁴

12. The French proposal was not adopted. However, the basic idea it reflected has been followed by the Commission. A significant element in the contribution of the Commission to the harmonization and unification of international trade law has been the endorsement of texts developed by other organizations. Moreover, these texts, as well as those prepared by the Commission itself, have been "highly varied in form and substance".

³ *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)*, para. 22 (Yearbook . . . 1968-1970, part two, I, A).

⁴ Draft basic convention establishing a common body of international trade law, UNCITRAL/III/CRP.3, para. 8 (Yearbook . . . 1968-1970, part three, V, B).

1. *Promotion of texts of other formulating agencies*

(a) *Urged ratification of United Nations convention*

13. The Commission has promoted the ratification of a convention adopted by the United Nations under other auspices, having recommended at its second, third, sixth and twelfth sessions that States which have not ratified or acceded to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards should do so.⁵ On the recommendation of the Commission, the General Assembly has also urged ratification or accession by those States which had not yet done so.⁶ Furthermore, the Commission at its tenth session welcomed the resolution of the Asian-African Legal Consultative Committee that those States in the Asian-African region which had not yet ratified or acceded to the Convention consider doing so.⁷

(b) *Urged ratification of regional convention*

14. The Commission, at its sixth session, promoted the ratification of a convention adopted at a regional level when it invited "the Economic Commission for Europe to draw the attention of the States which are eligible to ratify or accede to the 1961 European Convention on International Commercial Arbitration but have not done so, to the existence of that Convention and to invite them to indicate whether they intend to adhere thereto".⁸

(c) *Recommended use of trade terms and contract provisions*

15. The Commission has twice recommended the use on a world-wide basis of model trade terms or contract provisions. At its second session it urged the International Chamber of Commerce "to give the widest possible dissemination to Incoterms 1953 in order to encourage their world-wide use in international trade".⁹ It also commended, at its eighth session, the use of 1974 revision of Uniform Customs and Practice for Documentary Credits in transactions involving the establishment of a documentary credit.¹⁰

⁵ *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 112 (Yearbook . . . 1968-1970, part two, II, A); *ibid.*, *Twenty-fifth Session, Supplement No. 17 (A/8017)*, para. 156 (Yearbook . . . 1968-1970, part two, III, A); *ibid.*, *Twenty-eighth Session, Supplement No. 17 (A/9017)*, para. 85 (Yearbook . . . 1973, part one, II, A); *ibid.*, *Thirty-fourth Session, Supplement No. 17 (A/34/17)*, para. 81 (Yearbook . . . 1979, part one, II, A).

⁶ Resolution 3108 (XXVIII) of 12 December 1973, para. 5 (Yearbook . . . 1974, part one, I, C).

⁷ *Official Records of the General Assembly, Thirty-second Session, Supplement No. 17 (A/32/17)*, para. 39 (Yearbook . . . 1977, part one, II, A).

⁸ *Ibid.*, *Twenty-eighth Session, Supplement No. 17 (A/9017)*, para. 85 (Yearbook . . . 1973, part one, II, A).

⁹ *Ibid.*, *Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 60 (Yearbook . . . 1968-1970, part two, II, A).

¹⁰ *Ibid.*, *Thirtieth Session, Supplement No. 17 (A/10017)*, para. 41 (Yearbook . . . 1975, part one, II, A).

(d) *Transmitted general conditions to regional organizations*

16. The Commission has twice transmitted to the regional organizations sets of general conditions produced in other regions for their consideration. The text of the ECE general conditions relating to plant, machinery, engineering goods and lumber were transmitted by the Commission at its second session to the other regional economic commissions, as well as to other regional organizations active in the field of international trade law, with a request that they consult the Governments of the respective regions and/or interested trade circles for the purpose of obtaining their views and comments on the desirability of extending the use of those general conditions to the regions concerned.¹¹ In addition, the Commission requested the Secretary-General to transmit to the regional economic commissions for their use in the development of general conditions on a regional basis the text in English, French, Russian and Spanish of the General Conditions of Delivery (1968) of the Council for Mutual Economic Assistance.¹²

2. *Requests to other formulating agencies to undertake work*

(a) *Contract guarantees*

17. The Commission at its third session noted that the ICC had begun work towards the preparation of rules in respect of tender guarantees, performance guarantees and repayment guarantees. Several representatives suggested that the ICC's study should be expanded to include payment guarantees. In order to secure the views of banking and trade institutions in countries not represented in ICC, the Commission requested the Secretary-General to address a questionnaire on the subject to Governments and also to banking and trade institutions in countries not represented in ICC and to transmit to it the observations received. The Commission also requested the ICC to submit to it reports on the progress made by it and its proposed action in the matter of bank guarantees.¹³

18. The observations received by the Secretary-General were forwarded to the ICC for its use. Pursuant to the request of the Commission, ICC submitted reports to the fourth, seventh, eighth and tenth sessions of the Commission.

19. At its tenth session, the Commission decided to review the item of contract guarantees at its eleventh session.¹⁴ Although the ICC adopted its Uniform Rules

¹¹ *Ibid.*, *Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 60 (Yearbook . . . 1968-1970, part two, II, A).

¹² *Ibid.*

¹³ *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/8017)*, paras. 130-138 (Yearbook . . . 1968-1970, part two, III, A).

¹⁴ *Ibid.*, *Thirty-second Session, Supplement No. 17 (A/32/17)*, para. 38 (Yearbook . . . 1977, part one, II, A).

on Contract Guarantees (ICC publication No. 325) in 1978, the Commission has not had the occasion to review the subject.

20. The Commission at its twelfth session noted that the work of the ICC in respect of documentary letters of credit and contract guarantees had a direct bearing on work in respect of stand-by letters of credit.¹⁵

(b) *Stand-by letters of credit*

21. At its eleventh session, the Commission included, as a priority topic in its new programme of work, the item entitled "Stand-by letters of credit" and requested the Secretariat to study this topic in conjunction with ICC.¹⁶ At its twelfth session the Commission received a report from the Secretary-General which reviewed the work being done by ICC.¹⁷ The Commission requested the ICC to continue its work on stand-by letters of credit and to submit to it the results of its work before final adoption by its competent organs.¹⁸

22. ICC is currently considering the possibility of incorporating in a new revision of the 1974 version of Uniform Customs and Practice for Documentary Credits specific provisions dealing with stand-by letters of credit. At the request of ICC the Secretariat of the Commission sent a note verbale to Governments enclosing a questionnaire prepared by ICC which inquires, *inter alia*, as to the use of Uniform Customs and Practice in connexion with stand-by letters of credit.

(c) *Hague Convention of 1955 on conflict of laws in sales*

23. The Commission, at its first session, decided to send a questionnaire to States members of the United Nations and States members of any of its specialized agencies as to whether they intended to adhere to the 1955 Hague Convention on the Law Applicable to International Sales of Goods and the reasons for their positions.¹⁹ At its second session the Commission referred the Convention and the replies received to the Working Group on the International Sale of Goods.²⁰ The Working Group, however, concentrated its efforts on the revision of the two Hague Conventions of 1964, discussed below.

24. The Commission, at its eleventh session, decided to retain the 1955 Hague Convention on its programme

of work and indicated it was "to be considered only after the Hague Conference on Private International Law had completed its revision of that Convention".²¹

25. The Hague Conference on Private International Law, at its fourteenth session, decided "to include with priority in the Agenda of the Conference the revision of the Convention of June 15, 1955 on the law applicable to international sales of goods".²²

(d) *Geneva Convention of 1930 on conflict of laws in negotiable instruments*

26. At the fourth session of the Working Group on International Negotiable Instruments it was noted that, by virtue of articles 9 and 10 of the Geneva Convention of 1930 for the Settlement of Certain Conflicts of Laws in connexion with Bills of Exchange and Promissory Notes, States having ratified that Convention might be prevented from ratifying a convention on international bills of exchange and international promissory notes, as was being prepared by the Working Group.²³ Several possible solutions were suggested, among which was the fact that the Hague Conference on Private International Law had included the question of conflicts of law in the field of negotiable instruments in its programme of work and was considering the possibility of a revision of the Geneva Convention of 1930 or of drawing up a new convention on conflicts of law in this field. The Working Group decided to return to the question at its fifth session.

27. At its fifth session the Working Group suggested that the Hague Conference might wish to give priority to the consideration of the relationship between the 1930 Geneva Convention on conflicts of law and the draft Convention being prepared by the Working Group.²⁴

28. The Hague Conference, at its fourteenth session (1980), decided to take under consideration the preparation of a convention on the law applicable to negotiable instruments as a subject to be included in the agenda of a future session.²⁵ The Conference decided to leave to the Secretary-General of the Conference the responsibility of apprising the Governments of the Member States of the Conference of a proposal to initiate work at an inter-governmental level when, having particular regard to the advanced progress of the work undertaken within UNCITRAL, the time appears appropriate.

(e) *Participation by non-member States in work of other formulating agencies*

29. A recommendation by the Commission that an organ with less than universal membership undertake

²¹ *Ibid.*, *Thirty-third Session, Supplement No. 17 (A/33/17)*, para. 67 (Yearbook . . . 1978, part one, II, A).

²² Final Act, E.1.a.

²³ A/CN.9/117, paras. 64-65 (Yearbook . . . 1976, part two, II, 1).

²⁴ A/CN.9/141, para. 15 (Yearbook . . . 1978, part two, II, A).

²⁵ Final Act, E.2.a.

¹⁵ *Ibid.*, *Thirty-fourth Session, Supplement No. 17 (A/34/17)*, para. 48 (Yearbook . . . 1979, part one, II, A).

¹⁶ *Ibid.*, *Thirty-third Session, Supplement No. 17 (A/33/17)*, para. 67 (Yearbook . . . 1978, part one, II, A).

¹⁷ A/CN.9/163 (Yearbook . . . 1979, part two, II, B).

¹⁸ *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17)*, para. 48 (Yearbook . . . 1979, part one, II, A).

¹⁹ *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)*, para. 48, subpara. 17 (Yearbook . . . 1968-1970, part two, I, A).

²⁰ *Ibid.*, *Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 38 (Yearbook . . . 1968-1970, part two, II, A).

work in the field of international trade law of a nature to be of universal concern raises problems concerning the participation of States which are not members of the organ concerned.

30. *ICC*. The problem was first considered at the Commission's third session in connexion with the contemplated revision of the Uniform Customs and Practice for Documentary Credits by the International Chamber of Commerce.²⁶ The Commission welcomed the work of revision of the 1962 version scheduled to be undertaken by the ICC. At the same time, it felt that, in view of the widespread use of Uniform Customs (1962), a procedure should be developed that would permit interested circles in countries not represented in the ICC to make observations on the operation of Uniform Customs (1962), so that these could be taken into account by the ICC. The Commission was agreed that the Secretary-General should be requested to invite Governments and banking and trade institutions to submit such observations as they might wish to make on Uniform Customs (1962) for transmission to the ICC.

31. The Secretary-General received replies from 42 Governments and nine replies from banking and trade institutions.²⁷ These replies were transmitted to the ICC for consideration. They were also analysed and presented to the Commission for its use when the Commission decided to commend the use of the 1974 version of Uniform Customs and Practice.

32. The procedure by which the Secretary-General has sent to Governments a questionnaire prepared by the ICC in order to solicit the views of States not represented in it by a national committee is now well established, having been used in respect of contract guarantees as well as in the currently contemplated revision of the 1974 version of Uniform Customs and Practice for Documentary Credits.

33. *Hague Conference*. At its thirteenth session, the Commission was informed that it was intended to request the Fourteenth Session of the Hague Conference on Private International Law to change the procedures of the Conference so that, when it was dealing with matters of universal interest, such as matters of international trade law, all States would be invited to participate.²⁸

34. The Hague Conference, at its fourteenth session (1980), adopted the following decision:

"Having regard to the discussions which took place within the Fourth Commission on the desirability of

admitting the participation of non-member States in the work of the Conference where the subject-matter—such as the law of international trade—lends itself thereto;

"Considering that such a policy would be of a nature to increase respect for the area of activity of the Conference by other international organizations, in particular the United Nations Commission on International Trade Law (UNCITRAL);

"Grants that non-Member States may participate in the work of the Conference where, by virtue of the subject treated, it is felt that such participation is necessary;

"Decides that the implementation of this principle will be the subject, in each particular case, of a decision of the Governments of the Member States taken at a Plenary Session or within a Special Commission on general matters and policy of the Conference."²⁹

35. At the same time it decided that this principle should be applied in respect of the revision of the 1955 Convention on the Law Applicable to International Sales of Goods³⁰ and left it to the Secretary-General of the Conference to decide on the application of this principle in the preparation of an eventual convention on the law applicable to negotiable instruments.³¹

3. *Revision of work done by other agencies*

(a) *Hague Conventions of 1964 on sales*

36. The Commission at its first session decided to send a questionnaire to States members of the United Nations and States members of any of its specialized agencies as to whether they intended to adhere to the 1964 Hague Convention relating to a Uniform Law on the International Sale of Goods and to the 1964 Hague Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods and their reasons for their positions.³² The Commission, after reviewing the analysis of replies at its second session, decided to create a Working Group on the International Sale of Goods to ascertain which modifications of the existing texts might render them capable of wider acceptance by countries of different legal, social and economic systems.³³

37. The result of the work undertaken by the Working Group is the United Nations Convention on Con-

²⁶ *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/8017)*, paras. 119-125 (Yearbook . . . 1968-1970, part two, III, A).

²⁷ A/CN.9/101, para. 1 (Yearbook . . . 1975, part two, II, 3). The analysis of replies is to be found in A/CN.9/101/Add.1 (*ibid.*, part two, II, 4).

²⁸ *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17)*, para. 148 (Yearbook . . . 1980, part one, II, A).

²⁹ Final Act, D.1.

³⁰ *Ibid.*, E.1.b.

³¹ Final Act, E.2.b.

³² *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16*, para. 48 sub-para. 14 (Yearbook . . . 1968-1970, part two I, A).

³³ *Ibid.*, *Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 38 (Yearbook . . . 1968-1970, part two, II, A).

tracts for the International Sale of Goods, adopted on 10 April 1980 at Vienna.³⁴

(b) *Brussels Convention of 1924 on bills of lading*

38. At its fourth session the Commission decided to examine the International Convention for the Unification of Certain Rules relating to Bills of Lading (the Brussels Convention of 1924) and the Protocol to amend that Convention (the Brussels Protocol of 1968) with a view to revising and amplifying the rules as appropriate.³⁵ In this examination there was close co-operation between the Commission and the United Nations Conference on Trade and Development. The result of this examination was the United Nations Convention on the Carriage of Goods by Sea adopted on 31 March 1978 at Hamburg.³⁶

(c) *New York Convention of 1958 on arbitration-model arbitration law*

39. The Commission, at its tenth session, considered certain recommendations of the Asian-African Legal Consultative Committee (AALCC) relating to international commercial arbitration.³⁷ These recommendations were aimed at ensuring the autonomy of parties to agree on arbitration rules irrespective of any contrary provision of the law applicable to the arbitration, at safeguarding fairness in arbitral proceedings, and at excluding reliance on sovereign immunity in international commercial arbitration.³⁸ It was suggested by AALCC that these issues could possibly be clarified in a protocol to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

40. In the decision taken at its tenth session the Commission requested the Secretary-General to consult with AALCC and other interested international organizations and to prepare studies on the matters raised by AALCC. Pursuant to this request the Secretary-General submitted two reports to the twelfth session of the Commission. One analysed over one hundred court decisions concerning the application and interpretation of the 1958 New York Convention.³⁹ The report concluded that the Convention, despite some minor deficiencies, had satisfactorily met the general purpose for which it was adopted.

41. The second was a note by the Secretariat which discussed the need for greater uniformity of national laws on arbitral procedure and the desirability of establishing standards for modern and fair arbitration pro-

cedures.⁴⁰ The note suggested that the Commission commence work on a model law on arbitral procedure which could help to overcome most of the problems identified in the above survey and meet the concerns expressed in the recommendations of AALCC.

42. The Commission agreed at its twelfth session that there was no need to alter or amend, by way of revision or protocol, the 1958 Convention.⁴¹ At the same time it was agreed that a model law could assist States in reforming and modernizing their law on arbitration procedure and would thus help to reduce the divergencies encountered in the interpretation of the 1958 New York Convention.

43. At this session the Commission will have before it a report of the Secretary-General on the identification of issues possibly to be included in a model arbitration law.⁴²

4. *Reliance upon existing texts as models*

44. In some cases the Commission has undertaken work in a field in which there was no existing international text of universal applicability to be adopted, approved or revised. In these cases the Commission has expected the Secretariat to rely upon the existing regional, national or private texts already in existence as models for its own. In some cases this expectation has been explicit in the decision by the Commission while in other cases the preparatory work by the Secretariat has made clear the sources which could be relied upon.

(a) *UNCITRAL Arbitration Rules*

45. The decision by the Commission at its sixth session to request the Secretary-General to prepare a draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade⁴³ arose out of an original recommendation by the Special Rapporteur, Mr. Ion Nestor (Romania), that further study be given to the desirability of drawing up a model set of arbitration rules containing basic provisions.⁴⁴ It was noted in his report that there were innumerable sets of arbitration rules, almost all of which had been prepared for the use of a single arbitration centre, with no single set of arbitration rules serving as a model for the others. Nevertheless, it had been noted that "Even in the absence of evident harmony among the various provisions of the rules, the Economic Commission for Europe was able to deduce the general principles of those rules".⁴⁵ There-

³⁴ A/CONF.97/18, Annex I (Yearbook . . . 1980, part three, I, B).

³⁵ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17 (A/8417)*, para. 19 (Yearbook . . . 1971, part one, II, A).

³⁶ A/CONF.89/13, Annex I (Yearbook . . . 1978, part three, I, B).

³⁷ *Official Records of the General Assembly, Thirty-second Session, Supplement No. 17 (A/32/17)*, annex II, paras. 27-37 (Yearbook . . . 1977, part one, II, A, Annex II).

³⁸ The recommendations of AALCC are contained in A/CN.9/127, Annex (Yearbook . . . 1977, part two, III).

³⁹ A/CN.9/168 (Yearbook . . . 1979, part two, III, C).

⁴⁰ A/CN.9/169 (Yearbook . . . 1979, part two, III, D).

⁴¹ *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17)*, paras. 76-81 (Yearbook . . . 1979, part one, II, A).

⁴² A/CN.9/207 (reproduced in this volume, part two, III).

⁴³ *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 17 (A/9017)*, para. 85 (Yearbook . . . 1973, part one, II, A).

⁴⁴ A/CN.9/64, para. 180 (Yearbook . . . 1972, part two, III).

⁴⁵ *Ibid.*, para. 178.

fore, it was thought possible to draw up model rules containing basic provisions which would subsequently be recommended to all arbitration centres for gradual inclusion in their rules.

46. The Secretary-General in presenting the analysis of the comments of Governments on the proposals of the Special Rapporteur noted that there were two existing sets of arbitration rules drawn up by regional economic commissions: the Arbitration Rules of the Economic Commission for Europe (ECE Rules), adopted in 1966, and the Rules for International Commercial Arbitration of the United Nations Economic Commission for Asia and the Far East (ECAFE Rules), adopted in 1966.⁴⁶

47. The Secretary-General suggested that in view of the experience gained in respect of those regional uniform rules, the Commission might wish to consider whether the drawing up of a set of arbitration rules for world-wide use in *ad hoc* arbitration would not be the most appropriate method for the realization of the Special Rapporteur's proposal. He suggested that such a set of rules could immediately be used, if chosen by the parties, in *ad hoc* arbitration. In addition, such uniform rules for *ad hoc* arbitration might be found useful if it were decided at a later stage to give further attention to the harmonization of the rules of existing arbitration centres. Thus, such uniform rules could, even before their acceptance by existing arbitration centres, contribute to the unification of commercial arbitration, not only in those regions where uniform rules and appropriate arbitration centres already existed but also in other countries and regions and in international trade.

48. In preparing the draft Rules, the Secretary-General, at the request of the Commission, took into account the ECE Rules and the ECAFE Rules. He also took into account the following rules: the Rules of Conciliation and Arbitration of the International Chamber of Commerce, 1975, the Rules of Procedure of the Inter-American Commercial Arbitration Commission, the Commercial Arbitration Rules of the American Arbitration Association, the Rules of Procedure of the Foreign Trade Arbitration Commission at the USSR Chamber of Commerce. In addition, he took account of three conventions: the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958, the European Convention on International Commercial Arbitration, Geneva, 1961, and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Washington, 1965.⁴⁷

49. The Secretary-General prepared the draft Rules in consultation with the International Committee on Commercial Arbitration. At the request of the Commission, the Secretary-General, prior to presenting the

draft Rules to the Commission, circulated them for comments to the regional economic commissions of the United Nations and to centres of commercial arbitration, some 75 in total. In addition, the draft Rules were discussed at the Fifth International Arbitration Congress held at New Delhi, India, from 7 to 10 January 1975 prior to their consideration by the Commission.

50. The Commission adopted the UNCITRAL Arbitration Rules at its ninth session in 1976.⁴⁸

(b) *UNCITRAL Conciliation Rules*

51. A similar approach was taken in the preparation of the UNCITRAL Conciliation Rules. In particular, in the preparation of the draft Rules, the Secretariat held consultations with representatives of the International Council for Commercial Arbitration and the International Chamber of Commerce. Prior to their consideration and adoption by the Commission at its thirteenth session, the draft Rules were transmitted to Governments and interested international organizations for their observations.⁴⁹

(c) *UNIDROIT draft law on validity of contracts*

52. The Commission, at its sixth session, noted the receipt of a letter from the President of UNIDROIT which transmitted the text of a "draft of a law for the unification of certain rules relating to the validity of contracts of international sale of goods" and which invited the Commission to include the consideration of this draft as an item on its agenda.⁵⁰ At its seventh session the Commission requested the Working Group on the International Sale of Goods "after having completed its work on the uniform law on the international sale of goods, to consider the validity of contracts for the international sale of goods, on the basis of the . . . UNIDROIT draft, in connexion with its work on uniform rules governing the formation of contracts for the international sale of goods."⁵¹

53. The Working Group considered the draft law at its eighth and ninth sessions and decided that articles 3 to 5 on interpretation of statements by and acts of the parties should be included in the draft convention on formation of contracts for the international sale of goods. These articles, as amended, appear as article 8 of the United Nations Convention on Contracts for the International Sale of Goods.⁵²

⁴⁸ *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17)*, para. 56 (Yearbook . . . 1976, part one, II, A).

⁴⁹ *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17)*, paras. 30 and 106 (Yearbook . . . 1980, part one, II, A).

⁵⁰ *Ibid.*, *Twenty-eighth Session, Supplement No. 17 (A/9017)*, paras. 144-148 (Yearbook . . . 1973, part one, II, A).

⁵¹ *Ibid.*, *Twenty-ninth Session, Supplement No. 17 (A/9617)*, para. 93 (Yearbook . . . 1974, part one, II, A).

⁵² A/CONF.97/18, Annex 1 (Yearbook . . . 1980, part three, I, B).

⁴⁶ A/CN.9/112, paras. 1-8 (Yearbook . . . 1976, part two, III, 1).

⁴⁷ A/CN.9/112, paras. 1-8 (Yearbook . . . 1976, part two, III, 1).

(d) *New York Convention of 1974 on limitations in sales*

54. When the Commission, at its second session, decided to create a Working Group on Time-Limits and Limitations (Prescription) and to request it to study the topic of time-limits and limitations (prescription) in the field of international sale of goods with a view to the preparation of a preliminary draft of an international convention, it had before it (1) the preliminary draft Convention on the proper law and unification of provisions concerning prescription in connexion with materialization of international trade, prepared in 1961 within the framework of the Council for Mutual Economic Assistance, (2) the provisions on prescription in the General Conditions of Delivery, 1968, of the Council for Mutual Economic Assistance, (3) a preliminary draft convention on the uniform effect of the lapse of time on international sales of tangible movables, prepared by Professor H. Trammer of Poland, and (4) draft European rules on extinctive prescription, prepared within the framework of the Council of Europe.⁵³

55. The result of the work undertaken by the Working Group is the Convention on the Limitation Period in the International Sale of Goods, adopted on 12 June 1974 in New York.⁵⁴

(e) *Draft convention on negotiable instruments*

56. The Commission, at its second session, considered the possibilities for the harmonization and unification of the law of negotiable instruments.⁵⁵ It noted that there were two principal systems of negotiable instruments law, i.e. that represented by the Geneva Conventions of 1930 and 1931 and that represented by the Bills of Exchange Act, 1882 of the United Kingdom (BEA) and the United States Uniform Commercial Code (UCC), even though within these systems complete unification had not yet been achieved.

57. The Commission was of the opinion that a parallel unification of the two main systems would be a difficult and long-term task and that the work of unification should be concentrated on creating a new negotiable instrument for international payments that would reduce the problems arising out of the two systems. Therefore, the draft Convention on International Bills of Exchange and International Promissory Notes, which has been prepared by the Working Group on International Payments, has been based on a synthesis of the 1930 Geneva Uniform Law on Bills of

Exchange and Promissory Notes, the BEA and the UCC.⁵⁶

(f) *New international economic order: industrial contracts*

58. The Working Group on the New International Economic Order, at its session held in New York in January 1980, recommended to the Commission for possible inclusion in its work programme, *inter alia*:

“Harmonization, unification and review of contractual provisions commonly occurring in international contracts in the field of industrial development, such as contracts on research and development, consulting, engineering, supply and construction of large industrial works (including turn-key contracts or contracts *produit en main*), transfer of technology (including licensing), service and maintenance, technical assistance, leasing, joint venture, and industrial co-operation in general.”⁵⁷

59. The Working Group was of the opinion that this item would be of special importance to developing countries and to the work of the Commission in the context of the new international economic order.⁵⁸ The Group therefore requested the Secretariat to prepare a study on this item and submit it to the Commission at its next session so that the Commission could take its decisions in full knowledge of the issues involved.

60. The report submitted by the Secretariat discussed each of the ten types of contracts in the field of industrial development mentioned by the Working Group in terms of their main characteristics and contents, existing legislation, work done by other international organizations and bodies and possible work to be done by UNCITRAL.⁵⁹ In general, it was found that few countries had existing legislation directed specifically at any of these types of contracts, but that a number of international organizations, both public and private, had prepared model or standard contracts, checklists or guides for the negotiation of such contracts.

61. The Commission at its thirteenth session considered the report of the Secretary-General and decided to commence work on contractual provisions relating to contracts for the supply and construction of large industrial works (including turn-key contracts or contracts *produit en main*) and contracts on industrial co-opera-

⁵⁶ The original draft of a uniform law on international bills of exchange with commentary was in A/CN.9/67 (Yearbook . . . 1972, part two, II, 1). When it was decided to expand the proposed uniform law to include promissory notes, a new draft was prepared based on the same principles (A/CN.9/WG.IV/WP.2 (Yearbook . . . 1973, part two, II, 2)). It was the latter text which has formed the basis of deliberations of the Working Group.

⁵⁷ A/CN.9/176, para. 31 (Yearbook . . . 1980, part two, V, A).

⁵⁸ This recommendation was supported by the Asian-African Legal Consultative Committee, A/CN.9/194 (Yearbook . . . 1980, part two, V, D).

⁵⁹ A/CN.9/191 (Yearbook . . . 1980, part two, V, B).

⁵³ *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18* (A/7618), paras. 40-46 (Yearbook . . . 1968-1970, part two, II, A).

⁵⁴ A/CONF.63/15 (Yearbook . . . 1974, part three, 1, B).

⁵⁵ *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18* (A/7618), paras. 63-88 (Yearbook . . . 1968-1970, part two, II, A).

tion in general.⁶⁰ It was noted that these contracts were of a complex nature and included elements found also in other types of contracts. It was thought that the contracts would, therefore, form a basis for possible future work in respect of other related contracts.

62. The Commission endorsed the suggestion by the Secretariat that its work in respect of the contracts selected by the Commission should comprise studies of the available literature and the relevant work of other organizations and should analyse international contract practices.⁶¹ The view was also expressed that the Commission should consider the desirability of harmonizing and unifying contractual provisions or clauses commonly occurring in international contracts in the field of industrial development.

63. The report of the Secretary-General submitted to the second session of the Working Group analyses provisions in a number of model contracts, standard contracts and general conditions prepared by other international organizations in respect of contracts for the supply and construction of large industrial works.⁶²

5. *Preparation of text for use by other formulating agencies*

Unit of account

64. The current activity by the Commission in developing a unit of account of constant value for use in conventions which provide for a limitation of liability illustrates another aspect of the role the Commission is called on to fulfil.⁶³ The various conventions in question have been sponsored by a number of different organizations, both regional and world-wide. Each formulating agency has faced the same problems caused by the change in the role of gold as a measure of constant value. Any one of them could have undertaken the task of redrafting the provisions on the unit of account for use for its own conventions. Indeed, it was the International Civil Aviation Organization which first shifted from the gold franc to the Special Drawing Right as the unit of account in such conventions. However, it is more appropriate that a model clause for use in a large number of conventions be elaborated by an organization whose competence extends across the entire field of international trade law rather than by an organization whose competence is limited to certain aspects of that law. The staff of the International Monetary Fund is actively co-operating with the Commission in this undertaking.

⁶⁰ *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17)*, para. 143 (Yearbook . . . 1980, part one, II, A).

⁶¹ *Ibid.*, para. 139.

⁶² A/CN.9/WG.V/WP.4 and Add.1-8 (reproduced in this volume, part two, IV, B, 1).

⁶³ The decision to include such an item in the programme of work of the Commission was made at the eleventh session of the Commission, *Official Records of the General Assembly, Thirty-third Session, Supplement No. 17 (A/33/17)*, para. 67 (Yearbook . . . 1978, part one, II, A).

B. *Collection and dissemination of information concerning international trade law*

65. At the first session of the Commission

"29. The view was expressed by the great majority of speakers that the collection and dissemination of information pertaining to international trade law was a matter to which the Commission should give very early consideration. The Commission, it was said, could only have a complete view of what should be accomplished in the field of harmonization and unification, and more usefully expend its efforts to that end, if it had a complete picture of what had already been accomplished. The collection and dissemination of such information would ensure, on the part of the Commission, as well as on the part of other bodies active in the field, that wasteful duplication of effort and of result was avoided. On the basis of such information, the activities of the Commission and of other bodies could be satisfactorily co-ordinated. The circulation of information would make possible the dissemination on an international level of more exact and complete data on activities under way and on the results already achieved in the field of international trade law.

"30. The information to be collected, it was suggested, might include information as to all bodies active in the field of harmonization and unification of international trade law and information as to all work already accomplished and presently undertaken in the field of harmonization and unification. The collection and dissemination of such information was envisaged as a permanent aspect of the work of the Commission. It was thought that it would be appropriate to entrust this function to the Secretariat, which would act as a clearing-house, or documentation centre, for information on international trade law."⁶⁴

66. The Commission has undertaken or contemplated undertaking a number of different activities relevant to the collection and dissemination of information on the harmonization and unification of international trade law.

1. *Publication of information*

(a) *Current activities of other organizations*

67. At its first session the Commission decided to compile a register of organizations actively engaged in the progressive harmonization and unification of the law of international trade with a summary of the work which had been accomplished or was being done by them.⁶⁵

⁶⁴ *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)*, paras. 29-30 (Yearbook . . . 1968-1970, part two, I, A).

⁶⁵ *Ibid.*, para. 60 subparas. 1-3, 6.

68. This decision was reaffirmed at the second session of the Commission when the subject was discussed under the topic of "Co-ordination of the work of organizations in the field of international trade law" as well as under the topic of "Register of organizations".⁶⁶ The Commission was of the opinion that co-operation and exchange of information between organizations on their work would facilitate co-ordination. To that end it requested the Secretary-General to keep other organizations informed about the Commission's work. It also requested the Secretary-General to collect information on the activities of other organizations pertaining to the priority topics included in its programme of work and to make such information available to the Commission on the occasion of its annual sessions.

69. At its third session the Commission again considered the question within the context of establishing a register of organizations, as had been suggested at its second session.⁶⁷ The Commission considered two alternative methods by which up-to-date information on the activities of other organizations on matters dealt with by the Commission could be presented: (1) a permanent publication and (2) annual reports by the Secretary-General for the use of members of the Commission. The view was generally held that the second method was an adequate means of providing the Commission with the necessary information and the Commission requested the Secretary-General to submit such a report to the annual sessions of the Commission. This request was reaffirmed by the Commission at its twelfth session⁶⁸ and, at the request of the Commission, by the General Assembly, at its thirty-fourth session.⁶⁹

70. Pursuant to this request, since the fourth session of the Commission, the Secretary-General has submitted a report on the work of other organizations in the field of international trade law to each of the annual sessions of the Commission. Commencing with the report submitted to the sixth session of the Commission, these reports on the work of other organizations have been reprinted in the Yearbook, thereby making them permanently available.

(b) *Register of texts*

71. The Commission at its first session decided to publish a register of texts in the English, French, Russian and Spanish languages which would contain:

(a) The text of existing international conventions, model and uniform laws, customs and usages of a multilateral nature which had been published in written form;

(b) A brief summary of proposed international conventions, model and uniform laws, customs and usages of a multilateral nature which were in preparation and had been published in written form.

The registers were, in the first instance to be concerned with:

- (a) The law of sale of goods;
- (b) Standard trade terms;
- (c) Arbitration law;
- (d) Negotiable instruments;
- (e) Documentary credits and the collection of commercial paper.⁷⁰

72. At its second session the Commission confirmed the decision made at its first session to publish a register of texts.⁷¹ There was general agreement that the registers should serve the dual purpose of assisting the Commission in its own work and of providing the outside world (e.g. Governments, universities, organizations, commercial circles) with readily accessible texts of international legal instruments and related material. The list of subjects to be covered in the register was expanded to include the fields of guarantees and securities and of international shipping legislation, those fields having been added to the Commission's programme of work at its second session.

73. At its fourth session the Commission noted that the first volume of the register of texts had been published and authorized the publication of a second volume.⁷² This second volume was published in 1973. No further volumes have been published. As a result, the registers of texts do not include the three conventions and two sets of rules for the settlement of disputes which have been produced by the Commission.

(c) *Yearbook*

74. At its second session

"The Commission was of the opinion that it was desirable to establish an UNCITRAL Yearbook to make the Commission's contribution in the field of international trade law more widely known and more readily available beyond the forum of the United Nations."⁷³

75. Publication of the first volume of the Yearbook was authorized at the Commission's third session and the

⁷⁰ *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)*, para. 60, subparas. 1, 4-6 (Yearbook . . . 1968-1970, part two, I, A).

⁷¹ *Ibid.*, *Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 141 (Yearbook . . . 1968-1970, part two, II, A).

⁷² *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17 (A/8417)*, para. 131 (Yearbook . . . 1971, part one, II, A).

⁷³ *Ibid.*, *Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 162 (Yearbook . . . 1968-1970, part two, II, A).

⁶⁶ *Ibid.*, *Twenty-fourth Session, Supplement No. 18 (A/7618)*, paras. 134-141, 143-155 (Yearbook . . . 1968-1970, part two, II, A).

⁶⁷ *Ibid.*, *Twenty-fifth Session, Supplement No. 17 (A/8017)*, paras. 167-172 (Yearbook . . . 1968-1970, part two, III, A).

⁶⁸ *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17)*, para. 131 (Yearbook . . . 1979, part one, II, A).

⁶⁹ Resolution 34/142, para. 5 (b) (Yearbook . . . 1980, part one, I, C).

second volume at its fourth session.⁷⁴ At its fifth session the Commission decided that the Yearbook should be published on an annual basis as soon as practicable following the Commission's session to which the particular volume related.⁷⁵ "Such annual publication of the *Yearbook* would enable legal and business circles to follow the work of the Commission more closely and provide the means for the timely examination and evaluation of the Commission's work."⁷⁶

(d) *Bibliography*

76. The Commission at its first session requested the Secretary-General to inquire whether one or more universities, research or similar institutions in the States members of the United Nations would be willing to compile and disseminate a list of published books, articles and commentaries on those international conventions, model and uniform laws, customs and usages of a multilateral nature which were to be included in the register of texts.⁷⁷

77. In accordance with the request of the Commission, the Parker School of Foreign and Comparative Law began the preparation of a bibliography on international trade law. A sample of the bibliography dealing with the materials on arbitration was presented to the Commission at its second session.⁷⁸

78. At the third session of the Commission further bibliographies on international sale of goods, standard trade terms, negotiable instruments and bankers' commercial credits were presented to the Commission.⁷⁹ In a report to the Commission at that session the Secretary-General pointed out that the bibliography was being compiled without compensation by the Parker School of Foreign and Comparative Law of Columbia University but that it did not appear feasible to expect an institution to contribute such services indefinitely.⁸⁰

79. The Commission was of the opinion that various alternative ways of expanding the bibliographies without expenditure should be explored before requesting the General Assembly to make funds available to support further work on bibliographies.⁸¹

80. The Secretary-General reported to the Commission at its fourth session that it did not appear feasible to have bibliographies prepared on the priority topics of the Commission's programme of work on a voluntary basis and that the cost of having it done by staff of the Secretariat would be prohibitively expensive.⁸² However, as an alternative a "Survey of Bibliographies Relating to International Trade Law" was presented to the Commission with the suggestion that it might be considered to sufficiently meet current needs.⁸³

81. At its fourth session, the Commission requested the Secretary-General to invite members of the Commission to provide him with bibliographies relating to subject-matters included in the work of the Commission.⁸⁴ Bibliographical materials were subsequently supplied by Australia, Austria, Belgium, Brazil, Chile, Hungary, Italy, Romania, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics.⁸⁵

82. At its third session the Commission, consistent with its desire that alternative ways be found to have bibliographies prepared without requesting funds from the General Assembly, authorized the inclusion of a bibliography on the Commission and its work in the first volume of the Yearbook.⁸⁶ Each subsequent volume of the Yearbook has contained a bibliography of materials on the Commission and its work prepared by the Secretariat. In preparing the bibliography the Secretariat has been deeply grateful for the suggestions made to it by members of the Commission and other interested persons of items to be included.

(e) *Teaching materials*

83. The report of the Secretary-General to the third session of the Commission on training and assistance in the field of international trade law suggested "that an effective tool for the dissemination of international trade law, particularly in developing countries, may be through preparation of teaching materials. Such materials might serve various functions: to introduce law students in various countries to this developing body of law and also to help make this material more readily available to teachers, government officials and practitioners."⁸⁷

84. The Commission agreed with this suggestion and requested the Secretary-General "to consult with

⁷⁴ *Ibid.*, *Twenty-fifth Session, Supplement No. 17* (A/8017), para. 209 (Yearbook . . . 1968-1970, part two, III, A); *ibid.*, *Twenty-sixth Session, Supplement No. 17* (A/8417), para. 135 (Yearbook . . . 1971, part one, II, A).

⁷⁵ *Ibid.*, *Twenty-seventh Session, Supplement No. 17* (A/8717), para. 104 (Yearbook . . . 1972, part one, II, A).

⁷⁶ *Ibid.*, para. 102. The Secretariat regrets that the publication of Volume IX of the Yearbook has been delayed due to the transfer of the Commission's Secretariat from New York to Vienna. It is hoped that the prompt publication of the Yearbook will soon be restored.

⁷⁷ *Ibid.*, *Twenty-third Session, Supplement No. 16* (A/7216), para. 60, subpara. 7 (Yearbook . . . 1968-1970, part two, I, A).

⁷⁸ A/CN.9/24/Add.1.

⁷⁹ A/CN.9/R.3.

⁸⁰ A/CN.9/43.

⁸¹ *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17* (A/8017), paras. 179-186 (Yearbook . . . 1968-1970, part two, III, A).

⁸² A/CN.9/L.20.

⁸³ A/CN.9/L.20/Add.1 (Yearbook . . . 1971, part two, Bibliographies, I).

⁸⁴ *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17* (A/8417), para. 137 (Yearbook . . . 1971, part one, II, A).

⁸⁵ These materials were published in document A/CN.9/L.25 (Yearbook . . . 1974, part three, II, A).

⁸⁶ The proposal that a bibliography be included was made in A/CN.9/32/Add.1, Annex 1.

⁸⁷ A/CN.9/39, para. 11.

appropriate institutions on the feasibility of developing teaching materials in the subject matter of this field".⁸⁸

85. The Commission was informed at its fourth session that one organization had shown interest in the project and was developing plans for the production of these materials for use in Africa and Latin America.⁸⁹ However, at its fifth session the Commission was informed that there had been changes in the programmes of that organization and it was no longer planning on producing the envisaged teaching materials.⁹⁰

86. At the fifth session of the Commission "some representatives emphasized the importance of the project relating to the development of teaching materials on the subject of international trade law, and hoped that the Secretariat would succeed in its . . . efforts to secure funds for this project."⁹¹ Subsequently, at the sixth and seventh sessions Australia offered a sum of money to enable a young scholar from a developing country to undertake the compilation of such materials in Australia.⁹²

2. Other means of disseminating information

(a) Training and assistance

87. Within the Commission, it has always been understood that the Commission's activities in training and assistance would have the dual function of "increasing" the opportunities for the training of experts in the field of international trade law, particularly in many of the developing countries" and of "exposing interested persons in the particular countries and regions (where the Commission might hold seminars) to a more intense awareness of the work of the Commission."⁹³

88. In order to better define the concept of international trade law, the Commission, at its sixth session, decided to organize, in connexion with its eighth session, an international symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law.⁹⁴ It had been suggested in the report of the Secretary-General that "A general discussion on the proposed theme for the symposium would throw light on the nature and scope of

international trade law and assess, in a more deliberate manner, the feasibility of introducing the subject in the curricula of national universities."⁹⁵

89. Similarly, when the Commission decided at its thirteenth session to hold a second symposium on the occasion of its fourteenth session, "There was general agreement that the subject-matter to be discussed at the symposium should cover those matters in which UNCITRAL is or had been active, in particular, arbitration and conciliation, sales, maritime law and the legal implications of the new international economic order."⁹⁶

(b) Active participation of international organizations

90. As has already been discussed above, throughout the discussions in the Sixth Committee which led to the adoption of resolution 2205 (XXI), by which the Commission was created, there had been frequent mention of the contributions of existing formulating agencies to the harmonization and unification of international trade law and of the need for the new commission to co-operate with those agencies in the future. Therefore, the General Assembly in paragraphs 11 and 12 of resolution 2205 (XXI) provided that:

"11. The Commission may consult with or request the services of any international or national organization, scientific institution and individual expert, on any subject entrusted to it, if it considers such consultation or services might assist it in the performance of its functions.

"12. The Commission may establish appropriate working relationships with intergovernmental organizations and international non-governmental organizations concerned with the progressive harmonization and unification of the law of international trade."

91. In accordance with the indications given by the General Assembly, when the Secretary-General undertook the organization of the Commission's first session, he invited a number of international organizations to attend. Those organizations fell into two groups.⁹⁷ The first group consisted of the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (UNIDROIT) and the United International Bureau for the Protection of Intellectual Property, with which the United Nations had existing agreements providing for reciprocal representation at meetings, and UNCTAD, which is specifically mentioned in resolution 2205 (XXI). The second group consisted of specialized agencies of the United Nations system, other intergovernmental organizations and international non-governmental organizations which, in replying to the

⁸⁸ *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/8017)*, para. 200 (Yearbook . . . 1968-1970, part two, III, A).

⁸⁹ A/CN.9/58, para. 13.

⁹⁰ A/CN.9/65, para. 6.

⁹¹ *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717)*, para. 91 (Yearbook . . . 1972, part one, II, A).

⁹² *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 17 (A/9017)*, para. 93 (Yearbook . . . 1973, part one, II, A); *ibid.*, *Twenty-ninth Session, Supplement No. 17 (A/9617)*, para. 72 (Yearbook . . . 1974, part one, II, A).

⁹³ *Ibid.*, *Twenty-third Session, Supplement No. 16 (A/7216)*, para. 67 and *ibid.*, *Twenty-fifth Session, Supplement No. 17 (A/8017)*, para. 195 (Yearbook . . . 1968-1970, part two, I, A and part two, III, A).

⁹⁴ *Ibid.*, *Twenty-eighth Session, Supplement No. 17 (A/9017)*, para. 107 (Yearbook . . . 1973, part one, II, A).

⁹⁵ A/CN.9/80, para. 16.

⁹⁶ *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17)*, para. 158 (Yearbook . . . 1980, part one, II, A).

⁹⁷ A/CN.9/7, paras. 10-14.

invitation of the Secretary-General pursuant to resolution 2205 (XXI), had sent comments on a programme of work to be undertaken by the Commission or had manifested their interest by describing their own activities or expressing readiness to collaborate with the Commission.

92. At its second session, when it first considered the question, the Commission was of the opinion that the informal methods of collaboration with other organizations used up to that time had produced satisfactory results and should be continued. Specifically, it requested the Secretary-General to make arrangements for the attendance of observers of international organizations similar to those made for the second session.⁹⁸

93. Consequently, throughout the history of the Commission, intergovernmental organizations and international non-governmental organizations interested in international trade law have been invited to send observers to attend sessions of the Commission and of inter-sessional working groups, and have been consulted on specific subjects in which they were interested.

(c) *Global participation in activities of the Commission*

94. Although interested international organizations had been invited to send observers to the annual sessions of the Commission, States which were not members of the Commission were neither invited to send observers nor allowed to do so. This was in implementation of the decision of the General Assembly to allocate the membership of the Commission among the five geographical regions of the world.

95. At the seventh session of the Commission, the question arose whether the draft text of the revised rules on the responsibility of ocean carriers as it would be adopted by the Working Group on International Legislation on Shipping would be sent to all Governments for comment prior to consideration by the Commission or only to States members of the Commission. After discussion the Commission agreed that the draft text should be given the widest possible distribution to Governments and interested international organizations prior to the discussion of the draft text by the Commission.⁹⁹ The question was again discussed at the eighth session of the Commission in respect of the draft text of the revised Uniform Law on the International Sale of Goods to be adopted by the Working Group on the International Sale of Goods.¹⁰⁰ The precedent established in respect of the draft text of the revised rules on the responsibility of

ocean carriers was followed. Since that time it has been accepted practice by the Commission that whenever comments or proposals of Governments are solicited, all Governments will be invited to respond and not just those States members of the Commission.

96. The Sixth Committee has noted with approval the Commission's procedure of circulating draft legal texts prepared by its working groups to Governments and to interested international organizations for comment before adopting a final (draft) text. It was the view of the Sixth Committee "that that practice enabled the Commission to benefit from the broadest range of views in its preparation of texts."¹⁰¹

97. The Commission turned to the question of States not members of the Commission participating in the work of the Commission as observers at its ninth session.¹⁰² It noted that at various sessions of the Commission and of its Working Groups several Governments that were not members of the Commission had expressed the wish to attend as observers. The Commission was of the opinion that it would be in the interest of the Commission's work to have broad participation at the preliminary stages of preparation of a text so as to enhance its acceptability at a later time. Therefore, it recommended to the General Assembly that States not members of the Commission be permitted to attend sessions of the Commission and its Working Groups as observers. The General Assembly agreed with this recommendation in resolution 31/99 of 15 December 1976,* para. 10 (c).

98. Although the Commission has not established formal rules in respect of observers, it has generally accorded them the same right to speak and to submit proposals as is accorded a member of the Commission. It has been thought that a text of international trade law should reflect the interests of all participants in international trade. Therefore, in order to reach an effective consensus, it was desirable that all relevant points of view be expressed and considered at as early a stage as possible in the preparation of the text.

PART III. QUESTIONS OF METHODOLOGY

99. The adoption of a new programme of work by the Commission at its eleventh session as a result of the completion, or contemplated completion, of the items on the Commission's original programme of work has brought with it a certain diversity in the methodology of

⁹⁸ *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 155 (Yearbook . . . 1968-1970, part two, II, A).

⁹⁹ *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 17 (A/9617)*, para. 53 (Yearbook . . . 1974, part one, II, A).

¹⁰⁰ *Ibid.*, *Thirtieth Session, Supplement No. 17 (A/10017)*, paras. 15, 17 (Yearbook . . . 1975, part one, II, A).

* Yearbook . . . 1977, part one, I, C.

¹⁰¹ *Ibid.*, *Thirty-first Session, Annexes*, agenda item 108 (A/31/390), para. 10 (Yearbook . . . 1977, part one, I, B).

¹⁰² *Ibid.*, *Supplement No. 17 (A/31/17)*, para. 74 (Yearbook . . . 1976, part one, II, A).

the Commission in its approach to the legal issues of international trade. This part of the report discusses some aspects of that diversity in methodology.

A. *Final form of texts*

1. *In general*

100. During the Commission's first 10 years of existence it undertook work in four fields of interest: the law of international sales of goods, carriage of goods by sea, international negotiable instruments and international commercial arbitration. In spite of the evident differences between these four subjects, they have several common characteristics which made them particularly suitable for the Commission's initial efforts. All four of the subjects are fundamental to the law governing international trade transactions and the resolution of commercial disputes arising out of such transactions. There is an abundant literature on the law within the various legal systems, on the differences between the legal systems, and on the practical importance of those differences. Successful work in each of these four areas has been seen to contribute to the reduction of barriers to trade and undertaking the work has been obviously of value.

101. Each of the four areas lent itself to comprehensive texts. In respect of international sales of goods, carriage of goods by sea and international negotiable instruments, international conventions intended to become the basic law in a major field were appropriate. It was not thought necessary to prepare a new convention on international commercial arbitration, but the UNCITRAL Arbitration Rules were designed so as to be applicable to any form of international commercial dispute and were expected to serve as a model upon which institutional arbitration rules might be based, a process which has already begun.

102. The subjects on which the Commission decided to suspend any further action, the preparation of general conditions of sale for use in a wide range of commodity trades, products liability and security interests were also subjects in which a comprehensive text was envisaged.¹⁰³

103. The subject matter of the Commission's new programme of work does not always require a comprehensive solution, as did the original programme of work. For example, at this session the Commission will decide whether to adopt guidelines for administering arbitra-

tions under the UNCITRAL Arbitration Rules.¹⁰⁴ These guidelines would be addressed to arbitral institutions which have indicated their willingness to act as appointing authorities or to provide administrative services for arbitrations conducted under the Rules. If adopted, the guidelines would ensure that the UNCITRAL Arbitration Rules were, to the extent possible, left unchanged by the administering institution.

104. The guidelines would serve an important function, but not one of the same magnitude as do the Rules themselves. Similarly, the proposed uniform rules on liquidated damages and penalty clauses would provide rules to govern a problem which is difficult and important, but the proposed rules are not of the same magnitude in scope as, for example, the Commission's work in respect of the international sale of goods.

105. The difference in magnitude of the problems considered may have an impact on the final form which the Commission's work might take. This is true of both the draft guidelines and the draft uniform rules on liquidated damages and penalty clauses.¹⁰⁵ In both cases a certain economy of effort may be appropriate.

106. The guidelines would be, for the first time in the Commission's experience, cast in the form of recommendations rather than in the form of proposed rules ready for adoption. The individual administering arbitration institutions would be invited to review their administrative rules as to their compatibility with the UNCITRAL Arbitration Rules and to draw up, if necessary, new rules which would take account of local conditions and their own administrative structure.

107. The guidelines approach may be feasible when it would not be feasible to propose a text ready for adoption. Moreover, in some cases, the development of guidelines or recommendations may be an appropriate first objective, leaving until later a decision as to whether further actions are desirable. This would seem to be the case in respect of contracts for the supply and construction of large industrial works.

108. The Commission at its thirteenth session decided that in respect of its work on legal aspects of the new international economic order it would accord priority to work related to contracts in the field of industrial development and requested the Secretary-General to carry out preparatory work on contracts for the supply and construction of large industrial works and on industrial co-operation.¹⁰⁶ It was noted that these contracts

¹⁰³ For the Commission's actions in respect of products liability and security interests, see Report of the United Nations Commission on the work of its tenth session, *Official Records of the General Assembly, Thirty-second Session, Supplement No. 17 (A/32/17)*, para. 44 (Yearbook . . . 1977, part one, II, A), and Report of the United Nations Commission on International Trade Law on the work of its thirteenth session, *ibid.*, *Thirty-fifth Session, Supplement No. 17 (A/35/17)*, para. 28 (Yearbook . . . 1980, part one, II, A).

¹⁰⁴ The draft guidelines are contained in a note by the Secretary-General submitted to the thirteenth session, A/CN.9/189 (Yearbook . . . 1980, part two, IV, D). The Commission at its thirteenth session decided to postpone until its fourteenth session the consideration of the draft guidelines.

¹⁰⁵ See paras. 114 to 122, below.

¹⁰⁶ *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17)*, para. 143 (Yearbook . . . 1980, part one, II, A).

were of a complex nature and included elements found also in other types of contracts. It was thought that these contracts would, therefore, form a basis for possible future work in respect of other related contracts.¹⁰⁷

109. The Secretary-General has submitted to the second session of the Working Group on the New International Economic Order, which meets from 9 to 18 June 1981 at Vienna, the first half of the study in respect of contracts for the supply and construction of large industrial works.¹⁰⁸ The study analyses clauses found in a number of general conditions, model contracts or draft model contracts. The study suggests that a preliminary objective of the Commission's work might be the preparation of a legal guide in order to assist parties in the negotiation of contracts.¹⁰⁹

110. The study points out that there are already in existence several guides or guidelines such as those prepared by the Economic Commission for Europe (ECE) and the United Nations Industrial Development Organization (UNIDO) but that the ECE Guide is addressed to enterprises in Europe and is rather brief while the various UNIDO documents deal mainly with economic, technical, administrative and financial aspects of the installation of large industrial works.

111. The study also suggests that as work progresses on such a guide, a stage may be reached when a model clause approach would be feasible in the context of some clauses, or perhaps a uniform law approach would be appropriate in the light of conflicting national rules as regards other legal issues.

112. A comprehensive legal guide which would identify the legal issues to be kept in mind when negotiating and drafting contracts on large industrial works, describe various approaches pointing out the advantages and disadvantages of each approach and suggest alternative solutions would itself be an important contribution, especially to the developing countries. Contracts for the supply and construction of large industrial works are complex and the provisions are inter-related. The negotiation and drafting of an agreement which fairly represents the interests of all parties is less likely if they possess a significant difference in technical expertise. A comprehensive guide would, therefore, be of particular value to the developing countries which, as a rule, have less expertise in such matters.

113. The experience gained in preparing the guide would also benefit the Commission itself in any later work it might undertake in respect of contracts for the supply and construction of large industrial works or of similar types of contract.

2. Draft rules on liquidated damages and penalty clauses: an example

114. When the Working Group on International Contract Practices approved the text of the draft rules at its second session in New York from 13 to 17 April 1981, it decided that the question as to the form which these rules should take should be left for decision by the Commission.¹¹⁰ The Working Group did not make any recommendation but one representative stated that the business community in his country was of the view that it would not be useful to cast the uniform rules in the form of law.

115. The draft rules relate to the response of the legal system to a liquidated damages or penalty clause in a contract. This is a legal problem which cannot be solved by the contract itself. Therefore, if the rules are to be effective, they must be adopted by the legal system and cannot be in the form of draft contract clauses.

116. The Commission might adopt the rules in the form of a convention, in the form of a model law or in the form of recommendations. The advantages and disadvantages of each form are discussed below.

(a) Convention

117. The normal form for a text on the unification of international trade law is a convention, and it is the form which the Commission has used on three prior occasions. It is a well known method and presents no serious procedural difficulties. In all legal systems once the State has become a party to a convention, the convention, or a text containing the language of the convention, becomes the law governing the transactions that fall within its scope of application.

118. A convention can be adopted by a conference of plenipotentiaries or by the General Assembly on the recommendation of the Sixth Committee. The Commission will have before it at this session a note by the Secretariat on alternative procedures available for the adoption of the Commission's draft conventions which will discuss the advantages and disadvantages of these two methods.¹¹¹

119. There would be two major disadvantages to adopting the draft rules by means of a convention rather than as a model law or as recommendations. The first is that the further consideration of the text by a conference of plenipotentiaries or the Sixth Committee, would add expense both to the United Nations and to the States. The second is that the constitutional and political procedures for a State to become a party to a convention on international trade law be more complicated than are the procedures for ordinary domestic legislation.

¹⁰⁷ *Ibid.*, para. 136.

¹⁰⁸ A/CN.9/WG.V/WP.4 and Add.1 to 8 (reproduced in this volume, part two, IV, B, 1).

¹⁰⁹ A/CN.9/WG.V/WP.4, para. 41 (reproduced in this volume, part two, IV, B, 1).

¹¹⁰ Report of the Working Group on International Contract Practices on the work of its second session, A/CN.9/197 (reproduced in this volume, part two, I, A).

¹¹¹ A/CN.9/204 (reproduced in this volume, part two, VIII).

(b) *Model law*

120. The procedure for the adoption of a model law would be the same as the procedure for the adoption of the UNCITRAL Arbitration Rules and the UNCITRAL Conciliation Rules, i.e. the model law would be adopted by the Commission without reference to a conference of plenipotentiaries or to the General Assembly. However, the Commission might wish to request the General Assembly to commend the enactment of the model law, as it requested the General Assembly to commend the use of the two sets of Rules.

121. The adoption of a model law by the Commission is an easier and less costly procedure than the adoption of the same substantive text by a conference of plenipotentiaries. However, detailed consideration of the subject by the Commission alone may not generate the same interest which consideration by a conference of plenipotentiaries would generate and the likelihood of subsequent adoption by States may be reduced thereby.

(c) *Recommendation*

122. The procedure for the adoption of the draft rules in the form of a recommendation would be the same as for the adoption of a model law. The major difference would be that if the Commission were to adopt the draft rules as a model law, it would at the same time recommend that States adopt the model law by legislative action. If the Commission were to adopt the draft rules in the form of a recommendation, it would simply urge that States apply the substance of the rules to international contracts. The exact form in which the State would follow the recommendation would be immaterial. For example, if a State already applied the substance of the draft rules to international contracts by virtue of its existing domestic legislation or judicial practice, no further action by the State would be necessary.

B. *Endorsements of texts prepared by other agencies*

123. Whenever the Commission has endorsed a text prepared by another formulating agency, it has been the Commission itself which has taken the initiative. For example, the Commission at its first session requested the Secretary-General to invite the International Chamber of Commerce to submit a report including its views and suggestions concerning possible action that might be taken for the purpose of promoting the wider use of Incoterms and other trade terms by those engaged in international commerce.¹¹²

124. This request by the Commission elicited a report from the International Chamber of Commerce in respect of Incoterms that led to their endorsement by the Commission at its second session. The request by the Commission was the commencement of a long and fruitful collaboration between the Commission and the International Chamber of Commerce.

125. In recent years, however, the Commission has not sought out for endorsement texts adopted by other formulating agencies. This does not appear to have been a conscious policy so much as a reflection of the full programme of work which has characterized the recent sessions of the Commission. Now that the mandate of the Commission in the co-ordination of legal activities in the field of international trade law has been reaffirmed by the General Assembly, the Commission may wish to consider actively soliciting additional texts for endorsement.

126. The report on current activities of international organizations related to the harmonization and unification of international trade law contains every year a report on draft conventions, model laws, general conditions, trade terms, guides and guidelines which are in the course of preparation or which have been adopted by various intergovernmental and international non-governmental organizations. Some of these texts may be appropriate for endorsement by the Commission.¹¹³

C. *Publications of texts adopted and endorsed by the Commission*

127. It has been noted above that volume II of the Register of Texts of Conventions and other Instruments concerning International Trade Law was published in 1973 and that, as a result, the Register of Texts does not include any of the texts adopted by the Commission.¹¹⁴ For the same reason the Register of Texts does not include other important texts concerning international trade law adopted in the past eight years, such as the 1974 revision of Uniform Customs and Practice for Documentary Credits¹¹⁵ or the 1980 revision of Incoterms.

128. A new publication, perhaps in the form of a third volume of the Register of Texts containing the texts adopted by the Commission would be desirable.¹¹⁶ However, the function of this publication might be somewhat

¹¹³ This year's report is in A/CN.9/202 and Add.1 and 2 (reproduced in this volume, part two, V, A).

¹¹⁴ See para. 73 above.

¹¹⁵ See para. 15 above.

¹¹⁶ The funds for a third volume of the Register of Texts were already provided in the regular budget of the Commission for the biennium 1980-1981. The Secretariat has requested that funds should similarly be included for the biennium 1982-1983.

¹¹² *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), para 48 (20) (Yearbook . . . 1968-1970, part two, 1, A).*

different from that of the two volumes of the Register of Texts already published. While the Register of Texts was intended to "serve the dual purpose of assisting the Commission in its own work and of providing the outside world (e.g. Governments, universities, organizations, commercial circles) with readily accessible texts of international legal instruments and related material"¹¹⁷ the new publication might serve as a repository of the newly developing *lex mercatoria* as it emerges from the work of the Commission. In such a case the publication would also contain those texts endorsed by the Commission. In addition, the publication might contain introductory chapters which describe the activities of the Commission for the harmonization and unification of international trade law. It could be envisaged that in time the texts adopted and endorsed by the Commission would contain the content, if not the form, of an international trade code.

129. It could be expected that such a publication would aid in the promotion of the texts which were included. This may be seen to be of particular importance in the case of the three conventions adopted to date on the basis of a draft convention prepared by the Commission, none of which are as yet in force. In addition, inclusion in the publication of the texts endorsed by the Commission would increase the significance of the endorsement.

130. Moreover, a publication which contained the texts prepared and endorsed by the Commission would serve as an excellent source of documentary materials on international trade law. This would benefit teachers, practitioners and students alike. Even where libraries are adequate, the process of finding the relevant texts can be time consuming. Where the libraries are not adequate, which is unfortunately often the case, it may not be possible to find the texts at all. Therefore, the publication would also further the Commission's programme of training and assistance in international trade law.

CONCLUSIONS

131. During the first 14 years of the Commission's existence it has developed working methods that have permitted it to make an important contribution to the harmonization and unification of international trade law. It has produced three conventions and two sets of procedural rules for optional use by parties to a dispute

arising out of international trade. It has endorsed texts adopted by other organizations and has referred yet other texts to regional economic organizations for their consideration. It has engaged in a programme of information which has increased knowledge about international trade law. It has attempted to the extent possible to co-ordinate the multitude of formulating agencies engaged in the harmonization and unification of international trade law at both regional and universal level.

132. In order to strengthen its role as the central agency for the unification and harmonization of international trade law, the Commission may wish to consider the following recommendations.

133. The Commission may wish to reaffirm that its purpose is the harmonization and unification of the law of international trade. It recognizes that many formulas are appropriate for the rules which make up the law of international trade. It notes that resolution 2205 (XXI) mentions by way of example conventions, model and uniform laws, trade terms, provisions, customs and practice, but that other formulas, such as recommendations, guidelines and checklists, have been used by various formulating agencies and that yet other formulas may be appropriate in certain circumstances.

134. The Commission may wish to note that in its first several sessions it actively looked for existing texts prepared by other formulating agencies so that it might endorse those texts and encourage their increased use. It may further wish to note that its actions in so doing has had the additional effect of increasing co-operative activities with those other agencies. The Commission may wish to reaffirm its belief that this is an effective means to promote the harmonization and unification of international trade law.

135. The Commission may wish to reaffirm that the texts adopted and endorsed by it constitute an important contribution to the harmonization and unification of international trade law. The Commission may wish, therefore, to request the Secretary-General to publish those texts, with explanatory chapters to introduce the activities of the Commission, in an appropriate form under the regular budget appropriated for the publication of the Register of Texts, not only so that they would individually be more easily available, but also so that the contribution of the Commission to the work in this field would be more meaningful.

136. The Commission may also wish to request the Secretary-General further to strengthen contact with the other formulating agencies active in the field of international trade law with a view to ascertaining if any further co-operative arrangements could be made to promote the goals of the Commission, including the avoidance of duplication of work.

¹¹⁷ Report of the United Nations Commission on International Trade Law on the work of its second session, *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618)*, para. 136 (Yearbook . . . 1968-1970, part two, II, A).