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METHODS OF WORK FOR PRIORITY TOPICS

(Working paper submitted by the Working Group on agenda item 5 (a) and (b),  
as adopted, with amendments, by the Commission at its  
19th meeting on 22 February 1968)

I. INTRODUCTION

1. The purpose of this paper is to indicate possible methods that may be used in dealing with the priority topics selected for inclusion in the work programme of the Commission. The scope of this paper is confined to the period between the first and the second session of the Commission.
2. At its 14th meeting the Commission decided that the following topics should be given priority:
  - (a) international sale of goods;
  - (b) international payments;
  - (c) international commercial arbitration.
3. The Commission also decided that the methods of work should be suitable to the particular topic under consideration.
4. During the general debate the importance of making a thorough study of each topic in order to enable the Commission to make substantive decisions was emphasized. Paragraph IV of working paper A/CN.9/L.1 suggests that "working groups, or sub-committees or other appropriate bodies of the Commission, should be appointed during the present session to deal respectively with the topics mentioned in paragraph II and submit their reports to the Commission at its next session". It was also stressed during the debate that in carrying out its functions the Commission should co-operate with the respective organizations and avoid duplication of work.

## II. INTERNATIONAL SALE OF GOODS

5. During the general debate the following items, falling within the scope of international sale of goods, were suggested by delegations:
- (a) International sale of goods in general;
  - (b) Hague Conventions of 1964 relating to a Uniform Law on the International Sale of Goods and to a Uniform Law on the Formation of Contracts for the International Sale of Goods;
  - (c) Hague Convention of 1955 on the Law Applicable to International Sale of Goods;
  - (d) Elaboration of a commercial code;
  - (e) Contracts of sale;
  - (f) Different legal aspects of contracts of sale:
    - (i) Time-limits and limitations (prescription) in the field of international sale of goods;
    - (ii) Agency;<sup>1/</sup>
    - (iii) Consequences of frustration;
    - (iv) Force majeure clauses in contracts;
  - (g) General conditions of sale, standard contracts, Incoterms and other trade terms.

### Principal international instruments and formulations

6. The following international instruments and formulations may be considered as being of special importance with respect to the harmonization and unification of the law of the international sale of goods:
- (a) Convention relating to a Uniform Law on the International Sale of Goods of 1964 (prepared by UNIDROIT);
  - (b) Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods of 1964 (prepared by UNIDROIT);
  - (c) Convention on the Law Applicable to International Sale of Goods of 1955 (formulated by the Hague Conference on Private International Law);

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<sup>1/</sup> Under this item it is intended to deal both with the common law concept of "agency" and the concepts of "representation" (in French) and "full powers" in other systems.

(d) Convention on the Law Applicable for the Transfer of Property in International Sales of Corporeal Movables of 1958 (formulated by the Hague Conference);

(e) "Incoterms of 1953" - international rules for the interpretation of trade terms - (formulated by the International Chamber of Commerce);

(f) International rules for the interpretation of the trade terms "Delivered at frontier... (named place of delivery at frontier)" and "F Livered... (named place of destination in the country of importation) duty paid" (formulated by the International Chamber of Commerce);

(g) General Conditions of Sale and Standard Forms of Contract as listed in paragraph 67 of document A/6396 (formulated by the Economic Commission for Europe).

#### Selected items

7. In view of the wide scope and complex nature of the concept of international sale of goods as laid down in paragraph 5 above, at this early stage the Commission found it impractical to deal with all the facets of the subject at the same time.

Accordingly, the Commission selected some of the main items within the topic, i.e.:

(a) The Hague Conventions of 1964;

(b) The Hague Convention on Applicable Law of 1955;

(c) Time-limits and limitations (prescription) in the field of international sale of goods;

(d) General conditions of sale, standard contracts, Incoterms and other trade terms.

#### Other items within the priority list

8. It was agreed that any member of the Commission would be at liberty to submit to the Secretary-General studies on any topic on the priority list other than the selected items referred to in paragraph 7 above. The Secretary-General was requested to circulate such studies to all the members of the Commission.

#### Methods of work

(a) Study of the items as a whole

9. As regards methods of work, one possibility would be to make a comprehensive study of the selected items referred to in paragraph 7, having in mind the over-all aim of promoting the progressive harmonization and unification of the law of the international sale of goods, as a whole.

10. It would not seem possible, however, to prepare a study of such magnitude in time for submission to the second session of the Commission. As indicated in paragraph 6 above, the main instruments relating to the selected items were formulated by different organizations (UNIDROIT, the Hague Conference, ICC, ECE). Accordingly, the Commission did not find it desirable to entrust the work as a whole to a single organization. On the other hand, the Commission considered that if the organizations concerned were invited to deal jointly with the matter, it would be difficult for such organizations to make substantial progress within the short time available.

11. Other methods could be envisaged, such as entrusting the work to the Secretariat, in which case the assistance of consultants would be required. However, in view of the limited financial resources available to the Commission in 1968 this method was not found to be entirely suitable for the purpose.

(b) Study of the items separately

12. The Commission decided therefore, at this stage, to deal separately with the selected items, i.e.:

- (i) The Hague Conventions of 1964;
- (ii) The Hague Convention on Applicable Law of 1955;
- (iii) Time-limits and limitations (prescription) in the field of international sale of goods;
- (iv) General conditions of sale, standard contracts, Incoterms and other trade terms.

(i) The Hague Conventions of 1964

13. While the Hague Conventions of 1964 have not yet come into force<sup>2/</sup> they encompass a very wide area within the scope of the international sale of goods and are the product of many years of preparatory work.

14. It was considered desirable, therefore, to take stock of the attitude of States in respect of those conventions. For this purpose the Commission decided to adopt the following procedure:

A. The Secretary-General should send to States Members of the United Nations and States members of any of its specialized agencies a questionnaire, together with the text of the conventions and Professor Tunc's commentary thereon. Each of

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<sup>2/</sup> See document A/CN.9/5, paragraph 4 and foot-note 4/.

the States concerned should be invited to indicate whether or not the State intends to adhere to the 1964 Conventions and the reasons for its position.

B. In addition, the States members of the Commission should be invited to make, if possible, a study in depth of the subject, taking into account the aim of the Commission in the promotion of the harmonization and unification of the law of international sale of goods.

C. The replies and studies referred to in A and B above should be transmitted by Governments to the Secretary-General within six months from the receipt of the Secretary-General's invitation to that effect.

D. The Secretary-General should circulate the text of the aforementioned replies and studies to the States members of the Commission, UNIDROIT and any other organization especially concerned for their comments.

.. The Secretary-General should also prepare, in consultation with the secretariat of UNIDROIT, an analysis of the replies and studies received from Governments. In the preparation of such an analysis account should be taken of any action which might be undertaken by UNIDROIT, pursuant to Recommendation II adopted by the Diplomatic Conference on the Unification of Law Governing the International Sale of Goods.<sup>3/</sup> The analysis should be circulated to the States members of the Commission, UNIDROIT and any other organization especially concerned, for their comments.

F. The Commission at its second session, should consider the replies and studies referred to in A and B, the analysis referred to in E, as well as any comments made under D and E.

15. The Commission considered desirable that the replies and studies referred to in A and B of the preceding paragraph should reflect adequately the points of view of the different legal and economic systems as well as those of developed and developing countries.

(ii) The Hague Convention of 1955 on the Law Applicable to International Sale of Goods

16. As of this date, seven States<sup>4/</sup> have adhered to the Hague Convention of 1955, which was established under the auspices of the Hague Conference on Private

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<sup>3/</sup> See document A/CN.9/5, paragraph 5.

<sup>4/</sup> Belgium, Denmark, Finland, France, Italy, Norway and Sweden.

International Law. While the scope of the Convention is much less wide than the 1964 Conventions, it deals with a matter of considerable importance in avoiding conflicts of law in international sale of goods transactions. The Commission found it desirable, therefore, to draw the 1955 Convention to the attention of a wider range of States than those which are members of the Hague Conference on Private International Law.

17. For this purpose the Commission decided to adopt the following procedure:

A. The Secretary-General should transmit the text of the Convention of States Members of the United Nations and States members of any of its specialized agencies. At the same time each of the States approached should be invited to indicate whether or not the State intends to adhere to the 1955 Convention and the reasons for its position.

B. The replies to the above questions should be transmitted by Governments to the Secretary-General within six months from the receipt of the Secretary-General's invitation.

C. The Secretary-General should transmit the text of the replies to the Hague Conference on Private International Law for comments.

D. The Commission, at its second session, should consider the replies from Governments as well as any comments thereon made by the Hague Conference.

(iii) Time-limits and limitations (prescription) in the field of international sale of goods

18. The Commission decided to request the Secretary-General after appropriate consultation, to invite interested Governments of States who are members of the Commission to submit to the Secretary-General studies on the subject of time-limits and limitations (prescription) in the field of international sale of goods. The Secretary-General shall, in addressing invitations to Governments, have regard to the desirability of obtaining studies which are illustrative of the legal systems of the world.

(iv) General conditions of sale, standard contracts, Incoterms and other trade terms

19. With respect to general conditions of sale and standard contracts, the Commission decided to request the Secretary-General, in consultation with the

secretariats of the ECE, the other regional economic commissions and other organizations concerned, to submit to the second session of the Commission a preliminary report examining the possibility of promoting the wider use of the existing general conditions of sale and standard contracts.

20. As regards Incoterms 1953, the Commission decided to request the Secretary-General to invite the International Chamber of Commerce to submit to the Secretary-General, before the second session of the Commission, 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.

21. The reports referred to in the preceding paragraphs 19 and 20 should state the considerations and factors which are impeding a wider use and acceptance of general conditions of sale, standard contracts, Incoterms and other trade terms.

### III. INTERNATIONAL PAYMENTS

22. During the general debate the following topics, falling within the scope of international payments, were suggested by delegations:

- (a) negotiable instruments;
- (b) banker's commercial credits;
- (c) guarantees and securities.

#### Principal international instruments and formulations

23. The following international instruments and formulations may be considered as being of special importance with respect to the harmonization and unification of the law of international payments:

- (a) Convention providing a Uniform Law for Bills of Exchange and Promissory Notes of 1930;
- (b) Convention for the Settlement of Certain Conflicts of Laws in connexion with Bills of Exchange and Promissory Notes of 1930;
- (c) Convention providing a Uniform Law of Cheques of 1931;
- (d) Convention for the Settlement of Certain Conflicts of Laws in connexion with Cheques of 1931;

(e) Uniform Customs and Practice for Documentary Credits (formulated by the International Chamber of Commerce);

(f) Uniform Rules for the Collection of Commercial Paper (formulated by the International Chamber of Commerce).

Methods of work

24. The considerations contained in paragraphs 9-11 above in connexion with international sale of goods are generally applicable to the concept of international payments as well, which is also a wide and complex subject.

25. Rather than making a comprehensive study of international payments as a whole, the Commission found it convenient, therefore, to deal separately with (i) negotiable instruments; (ii) banker's commercial credit and (iii) guarantees and securities. Consistent with the object of the Commission, i.e. the progressive harmonization and unification of the law of international trade, it was agreed that the consideration of these items by the Commission should relate primarily to international transactions.

(i) Negotiable instruments

Unofficial translation - original text in Spanish

26. UNIDROIT has been working on the subject of unification of law relating to negotiable instruments.<sup>5/</sup> The Commission therefore considered it appropriate to request the Secretary-General to consult with UNIDROIT as to whether the latter would be prepared to make a study of the measures that could be adopted in order to promote the harmonization and unification of the law relating to negotiable instruments, in so far as transactions involving different countries are concerned, and especially:

(a) to examine the question of the convenience of promoting a wider acceptance of the Conventions of 1930 and 1931 referred to in sub-paragraphs (a), (b), (c) and (d) of paragraph 23 above;

(b) to study the possible means of giving reciprocal international recognition and protection to negotiable instruments under the Common Law and to the instruments recognized under the Geneva Conventions; and

5/ See document A/6396, annex II, A, 3.

(c) to consider the creation of a new international negotiable instrument for international payments.

27. The Commission will consider the reply from UNIDROIT at its second session, together with any suggestions that may be submitted by the States members of the Commission.

(ii) Banker's commercial credits

28. In view of the interest of, and work done by the International Chamber of Commerce on this and related topics<sup>6/</sup> the Commission decided to request the Secretary-General to inquire whether the ICC would be prepared to undertake a study of the subject. The Secretary-General was also requested to consult with other organizations concerned.

(iii) Guarantees and securities

29. It does not appear that any existing organization has dealt with the subject of the harmonization and unification of law with respect to guarantees and securities as related to international payments. At this stage, therefore, the Commission decided to request the Secretary-General to make a preliminary examination of this matter with a view to the possibility of making a study for submission to the Commission at the appropriate time.

#### IV. INTERNATIONAL COMMERCIAL ARBITRATION

##### Principal international instruments and formulations

30. The following international instruments and formulations may be considered as being of special importance with respect to the harmonization and unification of the law relating to international commercial arbitration:

- (a) Geneva Protocol on Arbitration Clauses of 1923;
- (b) Convention on the Execution of Foreign Arbitral Awards of 1927;
- (c) Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (adopted by a Conference convened by the United Nations);
- (d) European Convention on International Commercial Arbitration of 1961;

<sup>6/</sup> See document A/6396, paragraphs 147-166.

- (e) Arbitration Rules (formulated by the Economic Commission for Europe);
- (f) Agreement of 17 December 1962 relating to the Application of the European Convention on International Commercial Arbitration (formulated by the Council of Europe);
- (g) Convention on the Settlement of Investment Disputes between States and Nationals of Other States (formulated by the International Bank for Reconstruction and Development);
- (h) European Convention providing a Uniform Law on Arbitration (formulated by the Council of Europe);
- (i) Rules for International Commercial Arbitration (formulated by the Economic Commission for Asia and the Far East);
- (j) Standards for Conciliation (formulated by the Economic Commission for Asia and the Far East);
- (k) Draft Inter-American Convention on Commercial Arbitration (formulated by the Inter-American Juridical Committee);
- (l) Draft Protocol on the Recognition and Enforcement of Arbitral Awards (formulated by the Council of Europe).

Methods of work

31. As indicated in the list contained in the preceding paragraph, the United Nations (including its regional economic commissions) has been working on several aspects of international commercial arbitration.
32. The Commission decided therefore to request the Secretary-General, in consultation with the organs and organizations concerned, to prepare a preliminary study of steps that might be taken with a view to promoting the harmonization and unification of law in this field, having particularly in mind the desirability of avoiding divergencies among the different instruments on this subject.
33. With respect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which was established under the auspices of the United Nations, the Commission decided to draw the attention of Member States of the United Nations to the existence of the Convention and to invite States to consider the possibility of adhering to it.

V. COLLABORATION WITH ORGANIZATIONS

34. In carrying out its work on the topics selected as priority items the Commission considered it desirable to collaborate with organs and organizations concerned with the progressive harmonization and unification of those aspects of the law of international trade.

35. With this aim in view the Commission decided to request the Secretary-General to hold suitable consultations with the organs and organizations concerned as may be indicated in the different phases of the work.

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