

II. THE FIFTH SESSION (1972)

A. Report of the Commission (A/8717)*

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INTRODUCTION

The present report of the United Nations Commission on International Trade Law covers the Commission's fifth session, held at United Nations headquarters in New York from 10 April to 5 May 1972.

Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the General Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

CHAPTER I

ORGANIZATION OF THE SESSION

A. Opening

1. The United Nations Commission on International Trade Law (UNCITRAL) opened its fifth session on 10 April 1972. The session was opened on behalf of the Secretary-General by Mr. Constantin A. Stavropoulos, the Legal Counsel of the United Nations.

B. Statement by the Secretary-General

2. The Secretary-General of the United Nations addressed the Commission at its 112th meeting, on 25 April 1972.

C. Membership and attendance

3. Under General Assembly resolution 2205 (XXI), by which UNCITRAL was established, the Commission consists of 29 States, elected by the Assembly. The present members of the Commission, elected by the Assembly on 30 October 1967 and 12 November 1970, are the following States:¹

¹ Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. However, with respect to the initial election, the terms of 14 members, selected by the President of the Assembly, expired at the end of three years (31 December 1970). Accordingly, the General Assembly, at its twenty-fifth session, elected 14 members to serve for a full term of six years, ending on 31 December 1976. The terms of the 15 members marked with an asterisk will end on 31 December 1973. The terms of the other 14 members will end on 31 December 1976.

* Report of the United Nations Commission on International Trade Law on the work of its fifth session (1972), *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17* (A/8717).

Argentina*	Norway
Australia*	Poland
Austria	Romania*
Belgium*	Singapore
Brazil*	Spain*
Chile	Syrian Arab Republic*
Egypt	Tunisia*
France	Union of Soviet Socialist Republics
Ghana	United Kingdom of Great Britain and Northern Ireland
Guyana	Ireland
Hungary*	United Republic of Tanzania
India*	United States of America*
Iran*	Zaire*
Japan	
Kenya*	
Mexico*	
Nigeria	

4. With the exception of Iran, Tunisia and Zaire, all members of the Commission were represented at the session.

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

(a) *United Nations organs*

United Nations Conference on Trade and Development (UNCTAD).

(b) *Specialized agencies*

Inter-Governmental Maritime Consultative Organization (IMCO); International Monetary Fund (IMF).

(c) *Intergovernmental organizations*

Commission of the European Communities; Council for Mutual Economic Assistance (CMEA); Council of the European Communities; Hague Conference on Private International Law; International Institute for the Unification of Private Law (UNIDROIT); League of Arab States; Organization of American States (OAS); World Intellectual Property Organization (WIPO).

(d) *International non-governmental organizations*

International Chamber of Commerce (ICC); International Chamber of Shipping; International Law Association (ILA); International Maritime Committee; International Union of Marine Insurance.

D. *Election of officers*

6. At its 92nd and 96th meetings, on 10 and 12 April 1972, the Commission elected the following officers² by acclamation:

Chairman	Mr. Jorge Barrera-Graf (Mexico)
Vice-Chairman . . .	Mr. L. H. Khoo (Singapore)

² In accordance with a decision taken by the Commission at the second meeting of its first session, the Commission shall have three Vice-Chairmen, so that each of the five groups of States listed in General Assembly resolution 2205 (XXI), section II, paragraph 1, will be included among the officers of the Commission; see report of the United Nations Commission on International Trade Law on the work of its first session, *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)* and *Yearbook of the United Nations Commission on International Trade Law, Vol. I: 1968-1970* (United Nations publication, Sales No.: E.71.V.1, part two, I, para. 14).

Vice-Chairman . . .	Mr. Roland Loewe (Austria)
Vice-Chairman . . .	Mr. Bernard A. N. Mudho (Kenya)
Rapporteur	Mr. Jerzy Jakubowski (Poland)

E. *Agenda*

7. The agenda of the session as adopted by the Commission at its 93rd meeting, on 10 April 1972, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda; tentative schedule of meetings.
4. International sale of goods:
 - (a) Draft convention on prescription (limitation) in the international sale of goods;
 - (b) Uniform rules governing the international sale of goods;
 - (c) General conditions of sale and standard contracts.
5. International legislation on shipping.
6. International payments:
 - (a) Negotiable instruments;
 - (b) Bankers' commercial credits;
 - (c) Bank guarantees (contract and payment guarantees);
 - (d) Security interests in goods.
7. International commercial arbitration.
8. Training and assistance in the field of international trade law.
9. Yearbook of the Commission.
10. Future work.
11. Date of the sixth session.
12. Adoption of the report of the Commission.

F. *Establishment of a Committee of the Whole*

8. At its 93rd meeting, on 10 April 1972, the Commission decided to establish a Committee of the Whole and referred to it the following items for consideration:

- Item 6: International payments:
- (a) Negotiable instruments;
 - (b) Bankers' commercial credits;
 - (c) Bank guarantees (contract and payment guarantees);
 - (d) Security interests in goods.³
- Item 7: International commercial arbitration.
- Item 8: Training and assistance in the field of international trade law.
- Item 9: Yearbook of the Commission.

9. At its first meeting, on 19 April 1972, the Committee of the Whole unanimously elected Mr. Shinichiro Michida (Japan) as Chairman and Mr. Emmanuel Sam (Ghana) as Rapporteur.

10. The Commission, after having considered the report of the Committee of the Whole, decided to include the substance thereof in its report on the work of the present session.

³ Information on the work in progress with respect to this item was included in a note by the Secretary-General. Since the item did not call for current action by the Commission, it was not considered by the Committee of the Whole.

G. Decisions of the Commission

11. The decisions taken by the Commission in the course of its fifth session were all reached by consensus.

H. Adoption of the report

12. The Commission adopted the present report at its 125th meeting, on 5 May 1972.

CHAPTER II

INTERNATIONAL SALE OF GOODS

A. Draft Convention on Prescription (Limitation)

Background with respect to the preparation of the draft Convention

13. The Commission, at its second session, established a Working Group on Time-limits and Limitations (Prescription) and requested it to study the subject of time-limits and limitations (prescription) in the field of the international sale of goods.⁴ At its third session, the Commission, having considered a report of the Working Group (A/CN.9/30), requested it to prepare a preliminary draft Convention setting forth uniform rules and to submit this draft to the Commission at its fourth session.⁵

14. In conformity with the foregoing decision, the Working Group submitted to the Commission at its fourth session a report (A/CN.9/50 and Corr.1), setting forth the text of a preliminary draft Uniform Law on Prescription (Limitation) in the International Sale of Goods (annex I), a commentary on the draft Uniform Law (annex II), and the text of a questionnaire addressed to Governments and international organizations designed to obtain information and views regarding the length of the limitation or prescription period and other related matters (annex III). At that session, the Commission after having considered various issues arising out of the preliminary draft, invited members of the Commission to submit to the Secretary-General any proposals or observations they might wish to make with respect to the preliminary draft and requested the Secretary-General to analyse the replies received to the questionnaire and to submit the analysis to members of the Working Group.⁶ The Commission further requested the Working Group to prepare a final draft of the Uniform Law on Prescription (Limitation) for submission to the Commission at its fifth session; in this work, ac-

count would be taken of the views expressed during the discussion of the subject at the fourth session, of the analysis by the Secretariat of replies to the questionnaire mentioned above, and of any proposals or observations communicated to the Working Group.⁷ Pursuant to this decision, the Working Group held its third session from 30 August to 10 September 1971 and prepared a revised draft Convention on Prescription (Limitation) in the International Sale of Goods.

The Commission's action with respect to the draft Convention

15. At the present session, the Commission had before it the report of the Working Group on its third session (A/CN.9/70), to which the text of the draft Convention was annexed (annex I), and a commentary on the draft Convention which was issued as an addendum (A/CN.9/70/Add.1). The Commission also had before it a compilation of the studies and proposals considered by the Working Group (A/CN.9/70/Add.2), a note by the Secretariat regarding consideration of the report of the Working Group, and a note by the Secretariat concerning alternative methods for the final adoption of the draft Convention.

16. The Commission commended the Working Group for the expeditious manner in which it had fulfilled its mandate and expressed appreciation and gratitude to the members of the Working Group.

17. The Commission discussed, article by article, the draft Convention submitted by the Working Group and in the course of this discussion, various amendments and proposals were suggested by the members. The Commission adopted some articles without change and requested the Working Group to reconsider other articles in the light of the proposals and amendments that were made. For this purpose, the Working Group held several meetings in the course of the session and submitted a revised text of the draft Convention.

18. The Commission considered this revised text and approved most articles as revised. The Commission also set up a number of drafting parties to consider further the language of certain articles and adopted these articles as recommended by the drafting parties. The Commission, however, was not able to reach a consensus on certain provisions and, to indicate this fact, placed these provisions within square brackets for final consideration by an international conference of plenipotentiaries.

19. The Commission considered alternative methods for the final adoption of the draft Convention on Prescription (Limitation) in the International Sale of Goods in the light of the note submitted by the Secretariat on this subject. A statement was made by the representative of the Secretary-General on the financial implications of alternative procedures of adoption. All representatives who took the floor expressed the opinion that, in view of the highly technical and specialized nature of this draft Convention, the Commission should recommend to the General Assembly that an international conference of plenipotentiaries be convened to conclude, on the basis of the draft articles approved by the Commission, a Convention on Prescription (Limitation) in the International Sale of Goods.

⁴ Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618) and Yearbook of the United Nations Commission on International Trade Law, Vol. I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, II, para. 46.

⁵ Ibid., Twenty-fifth Session, Supplement No. 17 (A/8017) and Yearbook of the United Nations Commission on International Trade Law, Vol. I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, III, para. 97.

⁶ Ibid., Twenty-sixth Session, Supplement No. 17 (A/8417) and Yearbook of the United Nations Commission on International Trade Law, Vol. II: 1971 (United Nations publication, Sales No.: E.72.V.4), part one, II, para. 118.

⁷ Ibid.

Decision of the Commission

20. The Commission, at its 125th meeting on 5 May 1972, adopted unanimously the following decision:

"The United Nations Commission on International Trade Law"

"1. Approves the text of the draft Convention on Prescription (Limitation) in the International Sale of Goods, as set out below in paragraph 21 of the report of the Commission, noting that no consensus was reached with respect to those provisions appearing within square brackets;

"2. Requests the Secretary-General:

"(a) To prepare, together with the Rapporteur of the Commission, a commentary on the provisions of the draft Convention which would include both an explanation of the provisions approved by the Commission and references to reservations by members of the Commission to such provisions;

"(b) To circulate the draft Convention, together with the commentary thereon, to Governments and to interested international organizations for comments and proposals;

"(c) To prepare an analytical compilation of those comments and proposals and to submit this compilation to Governments and to interested international organizations;

"3. Recommends that the General Assembly should convene an international conference of plenipotentiaries to conclude, on the basis of the draft Convention adopted by the Commission, a Convention on Prescription (Limitation) in the International Sale of Goods."

21. The following articles of the draft Convention on Prescription (Limitation) in the International Sale of Goods were approved by the Commission, as stated in paragraph 1 of the decision above.

TEXT OF A DRAFT CONVENTION ON PRESCRIPTION
(LIMITATION) IN THE INTERNATIONAL
SALE OF GOODS

PART I: SUBSTANTIVE PROVISIONS

SPHERE OF APPLICATION

Article 1

1. This Convention shall apply to the limitation of legal proceedings and to the prescription of the rights of the buyer and seller against each other relating to a contract of international sale of goods.

2. This Convention shall not affect a rule of the applicable law providing a particular time-limit within which one party is required, as a condition for the acquisition or exercise of his claim, to give notice to the other party or perform any act other than the institution of legal proceedings.

3. In this Convention:

(a) "Buyer" and "seller", or "party", mean persons who buy or sell, or agree to buy or sell, goods, and the successors to and assigns of their rights or duties under the contract of sale;

(b) "Creditor" means a party who asserts a claim, whether or not such a claim is for a sum of money;

(c) "Debtor" means a party against whom the creditor asserts a claim;

(d) "Breach of contract" means the failure of a party to perform the contract or any performance not in conformity with the contract;

(e) "Legal proceedings" includes judicial, administrative and arbitral proceedings;

(f) "Person" includes corporation, company, association or entity, whether private or public;

(g) "Writing" includes telegram and telex.

Article 2

[1. For the purposes of this Convention, a contract of sale of goods shall be considered international if, at the time of the conclusion of the contract, the seller and buyer have their places of business in different States.]

2. Where a party to the contract of sale has places of business in more than one State, his place of business for the purposes of paragraph (1) of this article and of article 3 shall be his principal place of business, unless another place of business has a closer relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at the time of the conclusion of the contract.

3. Where a party does not have a place of business, reference shall be made to his habitual residence.

4. Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract shall be taken into consideration.

Article 3

1. This Convention shall apply only when at the time of the conclusion of the contract, the seller and buyer have their places of business in different Contracting States.

2. Unless otherwise provided herein, this Convention shall apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law.

3. This Convention shall not apply when the parties have validly chosen the law of a non-Contracting State.

Article 4

This Convention shall not apply to sales:

(a) Of goods of a kind and in a quantity ordinarily bought by an individual for personal, family or household use, unless the fact that the goods are bought for a different use appears from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract;

(b) By auction;

(c) On execution or otherwise by authority of law;

(d) Of stocks, shares, investment securities, negotiable instruments or money;

(e) Of ships, vessels or aircraft;

(f) Of electricity.

Article 5

This Convention shall not apply to claims based upon:

(a) Death of, or personal injury to, any person;

(b) Nuclear damage caused by the goods sold;

(c) A lien, mortgage or other security interest in property;

(d) A judgement or award made in legal proceedings;

(e) A document on which direct enforcement or execution can be obtained in accordance with the law of the place where such enforcement or execution is sought;

(f) A bill of exchange, cheque or promissory note.

Article 6

1. This Convention shall not apply to contracts in which the preponderant part of the obligations of the seller consists in the supply of labour or other services.

2. Contracts for the supply of goods to be manufactured or produced shall be considered to be sales within the meaning of this Convention, unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

Article 7

In interpreting and applying the provisions of this Convention, regard shall be had to its international character and to the need to promote uniformity in its interpretation and application.

THE DURATION AND COMMENCEMENT OF THE LIMITATION PERIOD

Article 8

Subject to the provisions of article 10, the limitation period shall be four years.

Article 9

1. Subject to the provisions of articles 10 and 11, the limitation period shall commence on the date on which the claim becomes due.

2. In respect of a claim based on fraud committed before or at the time of the conclusion of the contract, the claim shall, for the purpose of paragraph (1) of this article, be deemed to become due on the date on which the fraud was or reasonably could have been discovered.

3. In respect of a claim arising from a breach of the contract, the claim shall, for the purpose of paragraph (1) of this article, be deemed to become due on the date on which such breach occurs. Where one party is required, as a condition for the acquisition or exercise of such a claim, to give notice to the other party, the commencement of the limitation period shall not be postponed by reason of such requirement of notice.

Article 10

1. The limitation period in respect of a claim arising from a defect or lack of conformity which could be discovered when the goods are handed over to the buyer shall be two years from the date on which the goods are actually handed over to him.

2. The limitation period in respect of a claim arising from a defect or lack of conformity which could not be discovered when the goods are handed over to the buyer shall be two years from the date on which the defect or lack of conformity is or could reasonably be discovered, provided that the limitation period shall not extend beyond eight years from the date on which the goods are actually handed over to the buyer.

3. If the seller gives an express undertaking relating to the goods, which is stated to have effect for a certain period of time, whether expressed in terms of a specific period of time or otherwise, the limitation period, in respect of any claim arising from the undertaking, shall commence on the date on which the buyer discovers or ought to discover the fact on which the claim is based, but not later than on the date of the expiration of the period of the undertaking.

Article 11

1. If, in circumstances provided for by the law applicable to the contract, one party is entitled to declare the contract terminated before the time for performance is due, and exercises this right, the limitation period in respect of a claim based on any such circumstance shall commence on the date on which the declaration is made to the other party. If the contract is not declared to be terminated before performance becomes due, the limitation period shall commence on the date on which performance is due.

2. The limitation period in respect of a claim arising out of a breach by one party of a contract for the delivery of or payment for goods by instalments shall, in relation to each separate instalment, commence on the date on which the particular breach occurs. If, under the law applicable to the contract, one party is entitled to declare the contract terminated by reason of such breach, and exercises this right, the limitation period in respect of all relevant instalments shall commence on the date on which the declaration is made to the other party.

CESSATION AND EXTENSION OF THE LIMITATION PERIOD

Article 12

1. The limitation period shall cease to run when the creditor performs any act which, under the law of the jurisdiction where such act is performed, is recognized as commencing judicial proceedings against the debtor or as asserting his claim in such proceedings already instituted against the debtor, for the purpose of obtaining satisfaction or recognition of his claim.

2. For the purposes of this article, any act performed by way of counterclaim shall be deemed to have been performed on the same date as the act performed in relation to the claim against which the counterclaim is raised. However, both the claim and counterclaim shall relate to a contract or contracts concluded in the course of the same transaction.

Article 13

1. Where the parties have agreed to submit to arbitration, the limitation period shall cease to run when either party commences arbitral proceedings in the manner provided for in the arbitration agreement or by the law applicable to that agreement.

2. In the absence of any such provision, arbitral proceedings shall be deemed to commence on the date on which a request that the claim in dispute be referred to arbitration is delivered at the habitual residence or place of business of the other party or, if he has no such residence or place of business, than at this last known residence or place of business.

3. The provisions of this article shall apply notwithstanding any term in the arbitration agreement to the effect that no right shall arise until an arbitration award has been made.

Article 14

In any legal proceedings other than those mentioned in articles 12 and 13, including legal proceedings commenced upon the occurrence of:

(a) The death or incapacity of the debtor,

(b) The bankruptcy or insolvency of the debtor, or

(c) The dissolution or liquidation of a corporation, company, association or entity,

the limitation period shall cease to run when the creditor asserts his claim in such proceedings for the purpose of obtaining satisfaction or recognition of the claim, unless the law governing the proceedings provides otherwise.

Article 15

1. Where a claim has been asserted in legal proceedings within the limitation period in accordance with articles 12, 13 or 14 but such legal proceedings have ended without a final decision binding on the merits of the claim, the limitation period shall be deemed to have continued to run.

2. If, at the time such legal proceedings ended, the limitation period has expired or has less than one year to run, the creditor shall be entitled to a period of one year from the date on which the legal proceedings ended, unless they have ended because the creditor has discontinued them or allowed them to lapse.

Article 16

[1. Where a creditor has asserted his claim in legal proceedings within the limitation period in accordance with articles 12, 13 or 14 and has obtained a decision binding on the merits of his claim in one State, and where, under the applicable law, he is not precluded by this decision from asserting his original claim in legal proceedings in another State, the limitation period in respect of this claim shall be deemed not to have ceased running by virtue of articles 12, 13 or 14, and the creditor shall, in any event, be entitled to an additional period of one year from the date of the decision.

[2. If recognition or execution of a decision given in one State is refused in another State, the limitation period in respect of the creditor's original claim shall be deemed not to have ceased running by virtue of articles 12, 13, or 14, and the creditor shall, in any event, be entitled to an additional period of one year from the date of the refusal.]

Article 17

[1. Where legal proceedings have been commenced against one debtor within the limitation period prescribed by this Convention, the limitation period shall cease to run against any other party jointly and severally liable with the debtor, provided that the creditor informs such party in writing within that period that the proceedings have been commenced.

[2. Where legal proceedings have been commenced by a subpurchaser against the buyer, the limitation period prescribed by this Convention shall cease to run in relation to the buyer's claim over against the seller, if the buyer informs the seller in writing within that period that the proceedings have been commenced.

[3. In the circumstances mentioned in this article, the creditor or the buyer must institute legal proceedings against the party jointly or severally liable or against the seller, either within the limitation period otherwise provided by this Convention or within one year from the date on which the legal proceedings referred to in paragraphs (1) and (2) commenced, whichever is the later.]

Article 18

1. Where the creditor performs, in the State where the debtor has his place of business and before the expiration of the limitation period, any act, other than those acts prescribed in articles 12, 13 and 14, which under the law of that State has the effect of recommencing the original limitation period, a new limitation period of four years shall commence on the date prescribed by that law, provided that the limitation period shall not extend beyond the end of four years from the date on which the period would otherwise have expired in accordance with articles 8 to 11.

2. If the debtor has places of business in more than one State, or if he has no place of business, the provisions of paragraphs (2) and (3) of article 2 shall apply.

Article 19

1. Where the debtor, before the expiration of the limitation period, acknowledges in writing his obligation to the creditor, a new limitation period of four years shall commence to run from the date of such acknowledgement.

2. Payment of interest or partial performance of an obligation by the debtor shall have the same effect as an acknowledgement under paragraph (1) of this article if it can reasonably be inferred from such payment or performance that the debtor acknowledges that obligation.

Article 20

Where, as a result of a circumstance which is beyond the control of the creditor and which he could neither avoid nor

overcome, the creditor has been prevented from causing the limitation period to cease to run, the limitation period shall be extended so as not to expire before the expiration of one year from the date on which the relevant circumstance ceased to exist. The limitation period shall in no event be extended beyond four years from the date on which the period would otherwise expire in accordance with articles 8 to 11.

MODIFICATION OF THE LIMITATION PERIOD BY THE PARTIES

Article 21

1. The limitation period cannot be modified or affected by any declaration or agreement between the parties, except in the cases provided for in paragraph (2) of this article.

2. The debtor may at any time during the running of the limitation period extend the period by a declaration in writing to the creditor. This declaration may be renewed. In no event shall the period of limitation be extended beyond the end of four years from the date on which it would otherwise have expired in accordance with the provisions of this Convention.

3. The provisions of this article shall not affect the validity of a clause in the contract of sale whereby the acquisition or exercise of a claim is dependent upon the performance by one party of an act other than the institution of judicial proceedings within a certain period of time, provided that such clause is valid under the applicable law.

[LIMIT OF EXTENSION AND MODIFICATION OF THE LIMITATION PERIOD]

Article 22

[Notwithstanding the provisions of articles 12 to 21 of this Convention, no legal proceedings shall in any event be brought after the expiration of ten years from the date on which the limitation period commences to run under articles 9 and 11, or after the expiration of eight years from the date on which the limitation period commences to run under article 10.]

EFFECTS OF THE EXPIRATION OF THE LIMITATION PERIOD

Article 23

Expiration of the limitation period shall be taken into consideration in any legal proceedings only at the request of a party to such proceedings.

Article 24

1. Subject to the provisions of article 23 and of paragraph (2) of this article, no claim which has become barred by reason of limitation shall be recognized or enforced in any legal proceedings.

2. Notwithstanding the expiration of the limitation period, one party may rely on his claim as a defence or for the purpose of set-off against a claim asserted by the other party, provided that in the latter case this may only be done:

(a) If both claims relate to a contract or contracts concluded in the course of the same transaction; or

(b) If the claims could have been set-off at any time before the date on which the limitation period expired.

Article 25

Where the debtor performs his obligation after the expiration of the limitation period, he shall not thereby be entitled to recover or in any way claim restitution of the performance thus made even if he did not know at the time of such performance that the limitation period had expired.

Article 26

The expiration of the limitation period with respect to a principal debt shall have the same effect with respect to an obligation to pay interest on that debt.

CALCULATION OF THE PERIOD

Article 27

1. The limitation period shall be calculated in such a way that it shall expire at the end of the day which corresponds to the date on which the period commenced to run. If there is no such corresponding date, the period shall expire at the end of the last day of the last calendar month of the limitation period.

2. The limitation period shall be calculated by reference to the calendar of the place where the legal proceedings are instituted.

Article 28

Where the last day of the limitation period falls on an official holiday or other *dies non juridicus* precluding the appropriate legal action in the jurisdiction where the creditor institutes judicial proceedings as envisaged in article 12 or asserts a claim as envisaged in article 14, the limitation period shall be extended so as not to expire until the end of the first day following that official holiday or *dies non juridicus* on which such proceedings could be instituted or on which such a claim could be asserted in that jurisdiction.

INTERNATIONAL EFFECT

Article 29

A Contracting State shall give effect to acts or circumstances referred to in articles 12, 13, 14, 15, 17 and 18 which take place in another Contracting State, provided that the creditor has taken all reasonable steps to ensure that the debtor is informed of the relevant act or circumstance as soon as possible.

PART II: IMPLEMENTATION

Article 30

[Subject to the provisions of article 31, each Contracting State shall take such steps as may be necessary under its constitution or law to give the provisions of Part I of this Convention the force of law not later than the date of the entry into force of this Convention in respect of that State.]

Article 31

[In the case of a federal or non-unitary State, the following provisions shall apply:

[(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

[(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent States or provinces at the earliest possible moment;

[(c) A federal State party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.]

Article 32

Each Contracting State shall apply the provisions of this Convention to contracts concluded on or after the date of the entry into force of this Convention in respect of that State.

PART III: DECLARATIONS AND RESERVATIONS

Article 33

1. Two or more Contracting States may at any time declare that contracts of sale between a seller having a place of business in one of these States and buyer having a place of business in another of these States shall not be considered international within the meaning of article 2 of this Convention, because they apply the same or closely related legal rules which in the absence of such a declaration would be governed by this Convention.

2. If a party has places of business in more than one State, or if he has no place of business, the provisions of paragraphs (2) and (3) of article 2 shall apply.

Article 34

A Contracting State may declare, at the time of the deposit of its instrument of ratification or accession, that it will not apply the provisions of this Convention to actions for annulment of the contract.

Article 35

Any State may declare, at the time of the deposit of its instrument of ratification or accession to this Convention, that it shall not be compelled to apply the provisions of article 23 of this Convention.

Article 36

1. This Convention shall not prevail over conventions already entered into or which may be entered into, and which contain provisions concerning limitation of legal proceedings or prescription of rights in respect of international sales, provided that the seller and buyer have their places of business in States parties to such a Convention.

2. If a party has places of business in more than one State, or if he has no place of business, the provisions of paragraphs (2) and (3) of article 2 shall apply.

FORMAL AND FINAL CLAUSES NOT CONSIDERED
BY THE COMMISSION

22. The following articles were not considered by the Commission and it was agreed that they should be submitted for consideration to the proposed International Conference of Plenipotentiaries.

Article 37

No reservation other than those made in accordance with articles 33 to 35 shall be permitted.

Article 38

1. Declarations made under articles 33 to 35 of this Convention shall be addressed to the Secretary-General of the United Nations. They shall take effect [three months] after the date of their receipt by the Secretary-General or, if at the end of this period this Convention has not yet entered into force in respect of the State concerned, at the date of such entry into force.

2. Any State which has made a declaration under articles 33 to 35 of this Convention may withdraw it at any time by a notification addressed to the Secretary-General of the United Nations. Such withdrawal shall take effect [three months] after the date of the receipt of the notification by the Secretary-General. In the case of a declaration made under paragraph (1)

of article 33 of this Convention, such withdrawal shall also render inoperative, as from the date when the withdrawal takes effect, any reciprocal declaration made by another State under that paragraph.

PART IV: FINAL CLAUSES

Article 39

[Signature]⁸

This Convention shall be open until [] for signature by [].

Article 40

[Ratification]⁹

This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 41

[Accession]¹⁰

This Convention shall remain open for accession by any State belonging to any of the categories mentioned in article 39. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 42

[Entry into force]¹¹

1. This Convention shall enter into force [six months] after the date of the deposit of the [] instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the [] instrument of ratification or accession, this Convention shall enter into force [six months] after the date of the deposit of its instrument of ratification or accession.

Article 43

[Denunciation]¹²

1. Any Contracting State may denounce this Convention by notifying the Secretary-General of the United Nations to that effect.

2. The denunciation shall take effect [12 months] after receipt of the notification by the Secretary-General of the United Nations.

Article 44

[Declaration on territorial application]

Alternative A¹³

1. Any State may, at the time of the deposit of its instrument of ratification or accession or at any time thereafter, declare, by means of a notification addressed to the Secretary-General of the United Nations, that this Convention shall be applicable to all or any of the territories for whose international relations it is responsible. Such a declaration shall take effect [six months] after the date of receipt of the notification by the Secretary-General of the United Nations, or, if at the end of that period this Convention has not yet come into force, from the date of its entry into force.

⁸ Based on art. 81 of the Vienna Convention on the Law of Treaties (United Nations publication, Sales No.: E.70.V.5, document A/CONF.39/27).

⁹ Art. 82, *ibid.*

¹⁰ Art. 83, *ibid.*

¹¹ Art. 84, *ibid.*

¹² Based on article XII of the 1964 Hague Convention relating to a Uniform Law on the International Sale of Goods, herein cited as the "Hague Sales Convention".

¹³ Based on article XIII of the Hague Sales Convention.

2. Any Contracting State which has made a declaration pursuant to paragraph (1) of this article may, in accordance with article 43 denounce this Convention in respect of all or any of the territories concerned.

Alternative B¹⁴

This Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom. In such a case, the Party shall endeavour to secure the needed consent of the territory within the shortest period possible and, when the consent is obtained, the Party shall notify the Secretary-General. This Convention shall apply to the territory or territories named in such a notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.

Article 45

[Notifications]¹⁵

The Secretary-General of the United Nations shall notify the Signatory and Acceding States of:

(a) The declarations and notifications made in accordance with article 38;

(b) The ratifications and accessions deposited in accordance with articles 40 and 41;

(c) The dates on which this Convention will come into force in accordance with article 42;

(d) The denunciations received in accordance with article 43;

(e) The notifications received in accordance with article 44.

Article 46

[Deposit of the original]

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at [place], [date].

B. Uniform rules governing the international sale of goods

23. The Commission, at its second session, established a Working Group on the International Sale of Goods and requested the Working Group to ascertain which modifications of the text of the Uniform Law on the International Sale of Goods (ULIS), annexed to the 1964 Hague Convention, might render that Convention capable of wider acceptance, or whether it would be necessary to elaborate a new text for this purpose.¹⁶ The Working Group held two meetings in 1970 and a third meeting in January 1972.

24. At its fourth session, the Commission decided that, "until the new text of a uniform law or the revised

¹⁴ Based on article 27 of the Convention on Psychotropic Substances, 1971.

¹⁵ Based on article XV of the Hague Sales Convention.

¹⁶ Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, II, para. 38, subpara. 3 (a).

text of ULIS has been completed, the Working Group should submit a progress report on its work to each session of the Commission, and, any comments or recommendations which representatives may make at the sessions on issues set out in the progress reports shall be considered by the Working Group in the preparation of the final draft."¹⁷

25. At the present session, the Commission had before it the progress report of the Working Group on the International Sale of Goods on its third meeting, held in Geneva from 17 to 28 January 1972 (A/CN.9/62 and Corr.1 and Add.1 and 2).¹⁸

26. Several representatives stressed the difficulty and complexity of the task assigned to the Working Group and praised the Working Group for the progress it had achieved. It was held that although many questions could not be solved in a final form at the last session of the Working Group, the preparation of draft compromise texts for consideration at the next session constituted a great step towards final solutions for these questions.

27. Some representatives stated their views concerning questions relating to the revision of ULIS and requested that their views be taken into consideration by the Working Group in the elaboration of the final text of a draft uniform law. Thus, one representative suggested that the Working Group should strive to improve the definitions in the law by making them simpler and more easily understandable; such definitions might then replace provisional definitions in all conventions dealing with the international sale of goods. The need for simpler and more comprehensible definitions with special reference to the definition of "delivery" of goods was supported by another representative. It was also suggested that the uniform law should only regulate questions which are of practical significance; accordingly, provisions relating to questions of only a theoretical nature (e.g., article 25, paragraph 2 of the recommended text) should be omitted.

28. One representative recalled that several members of the Working Group had expressed reservations with respect to the definition of international sale in the uniform law and suggested that the Working Group should reconsider that definition. Another representative suggested that the definition of delivery should be revised in the light of the definition in the 1939 draft of ULIS.

29. In respect of article 46, one representative suggested that in the preparation of the study of that article requested by the Working Group, the Secretariat should also examine the possibility of including a provision whereby the buyer would be given the right to claim from the seller the costs incurred by the buyer in remedying defects in the goods. Some representatives suggested further that the Working Group should give further thought to the concept of anticipatory breach in article 48 and other articles of ULIS.

30. Several comments were made in connexion with the working methods of the Working Group. One repre-

sentative expressed the view that the Working Group could carry out its work more efficiently if it consisted of fewer members. Another representative suggested that small expert groups composed of two or three representatives should be established in order to elaborate texts on definitions by correspondence.

31. Some representatives pointed out that the Working Group would need considerable time at its next session for completion of the unfinished work of its third session. They therefore suggested that the next regular session of the Working Group should be convened for a period of three weeks. In this connexion, the Commission heard a statement by the representative of the Secretary-General on the financial implications of such sessions of the Working Group.

Decision of the Commission

32. The Commission, at its 124th meeting on 4 May 1972, adopted unanimously the following decision:

"The United Nations Commission on International Trade Law

"1. *Takes note* of the progress report of the Working Group on the International Sale of Goods on the work of its third session;¹⁹

"2. *Takes note with approval* of the decision of the Working Group that it will hold its fourth session in New York from 22 January to 2 February 1973."

C. General conditions of sale

33. The Commission, at its second session, developed a programme of work designed to ascertain whether certain general conditions of sale prepared under the auspices of the Economic Commission for Europe could be utilized in other regions.²⁰ At its fourth session the Commission decided to continue with the implementation of that decision and requested the Secretary-General to address inquiries on this question directly to Governments, chambers of commerce, trade associations and other trade organizations.²¹

34. At the third session, the Commission had extended its work in this field of law to the examination of the feasibility of developing general conditions embracing a wider scope of commodities and requested the Secretary-General to commence a study of the subject.²² Pursuant to this request, the Secretary-General submitted to the Commission at its fourth session a report including the first phase of the study (A/CN.9/54). After consideration of the report, the Commission requested the Secretary-General to continue his study on the subject.²³

¹⁹ A/CN.9/62.

²⁰ *Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970* (United Nations publication, Sales No.: E.71.V.1), part two, II, para. 60, subpara. 1.

²¹ *Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971* (United Nations publication, Sales No.: E.72.V.4), part one, II, para. 106, subpara. (a).

²² *Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970* (United Nations publication, Sales No.: E.71.V.1), part two, III, para. 102, subpara. (b).

²³ *Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971* (United Nations publication, Sales No.: E.72.V.4), part one, II, para. 106, subpara. (b).

¹⁷ *Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971* (United Nations publication, Sales No.: E.72.V.4), part one, II, para. 92, subpara. 1 (c).

¹⁸ The Commission considered the report at its 113th meeting on 26 April 1972.

35. The Commission had before it a report of the Secretary-General (A/CN.9/69) on the implementation of these decisions.²⁴ The representative of Japan distributed to members of the Commission a study he had made concerning the ECE general conditions.

36. All representatives who spoke on the subject commended the report of the Secretary-General and expressed their appreciation for the study prepared by the representative of Japan.

37. Several representatives emphasized the importance of the Commission's work in this field of law and it was agreed that this work should be continued. Some representatives, however, maintained their view, expressed at the fourth session of the Commission, that in free market economies general conditions and trade terms were more appropriately dealt with by trade associations. They suggested, therefore, that the Commission should confine its work in this field, within a narrow scope.

38. One representative expressed the view that the adoption of a new uniform law on the international sale of goods might significantly reduce the importance of general conditions. On the other hand, a number of representatives pointed out that questions dealt with by a uniform law on sale and by general conditions of sale were different: a uniform law must be confined to general rules, while general conditions might provide specific and detailed contractual provisions. Both approaches were useful, but one could not be substituted for the other. It was agreed, however, that, despite these differences between uniform laws and general conditions, their provisions, as far as possible, should be in harmony. In this connexion, one representative suggested that a study should be prepared in order to determine general guidelines regarding questions to be dealt with in general conditions (for example, formation of contract, questions relating to letters of credit) and that, before submission to the Commission for adoption, those guidelines be considered by the Working Group on Sales.

39. In respect of general conditions drawn up under the auspices of ECE, one representative expressed his disappointment in the small number of replies which had been received to the questionnaire of the Secretary-General. Another representative suggested that Governments should be encouraged to reply to the questionnaire.

40. Some representatives noted that they were sceptical about the possibility of promoting the ECE general conditions in regions other than Europe on the ground that those formulations had been drawn up with a view to meeting the requirements of trade among countries situated in the same continent and in relatively close proximity to each other. It was also suggested that these general conditions were not widely used even in Europe. On the other hand, a number of representatives expressed the view that the general conditions were widely used as a basis for drawing up individual contracts and as a basis for agreement on balanced solutions to specific contractual problems. In this way, the ECE general conditions had aided the work of

lawyers and businessmen and had contributed to the harmonization of the law of trade.

41. One representative suggested that the Commission should promote the dissemination of regional general conditions and especially of those drawn up under the auspices of the Economic Commission for Europe. Another representative proposed that the Commission should redraft the ECE general conditions in order to make them more acceptable.

42. In respect of the Secretary-General's study on "general" general conditions, the Commission agreed that the Secretary-General should be requested to continue the work on this subject. One representative expressed the view that such general conditions should reflect basic rules which would be applicable to the sale of all commodities. In the opinion of that representative, such optional general conditions would prove useful. Another representative suggested that the Secretary-General should include in the investigation other further general conditions, for example, those drawn up by the London Corn Trade Association. It was also proposed that the study be extended to the seller's obligations relating to the maintenance and repair of durable goods and machinery with a view of standardizing such obligations.

Decision of the Commission

43. The Commission at its 114th meeting, on 28 April 1972, adopted unanimously the following decision:

"The United Nations Commission on International Law"

"1. *Decides* to defer final action until its sixth session on the promotion of the general conditions drawn up under the auspices of the Economic Commission for Europe;

"2. *Requests* the Secretary-General to submit to the Commission at its sixth session his final study on the feasibility of developing general conditions embracing a wider scope of commodities and, to the extent feasible, to commence the preparation of guidelines on this subject and of a draft set of such general conditions."

CHAPTER III

INTERNATIONAL LEGISLATION ON SHIPPING

44. The Commission, at its fourth session, decided to examine the rules governing the responsibility of ocean carriers for cargo in the context of bills of lading; and set forth a programme of work for the UNCITRAL Working Group on International Legislation on Shipping.²⁵

²⁵Report of the Commission on the work of its fourth session, *Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971* (United Nations publication, Sales No.: E.72.V.4), part one, II, paras. 10-23). For the Commission's prior action on the subject, see the report of the Commission on the work of its second session, *Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970* (United Nations publication, Sales No.: E.71.V.1), part two, II, paras. 114-133, and the report of the Commission on the work of its third session, *Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970*, part two, III, paras. 157-166).

²⁴The subject was considered by the Commission at its 113th and 114th meetings on 28 April 1972.

45. The Working Group met from 31 January to 11 February 1972, and examined the following subjects: the period of carrier responsibility, responsibility for deck cargo and live animals, clauses of bills of lading confining jurisdiction over claims to a selected forum (choice of forum clauses, arbitration clauses) and approaches to basic policy decisions concerning the allocation of risks between the cargo owner and the carrier. In its consideration of these subjects, the Working Group used as its basic document the report of the Secretary-General entitled "Responsibility of ocean carriers for cargo: bills of lading" (A/CN.9/63/Add.1). The report of the Working Group (A/CN.9/63) contained specific draft legislative proposals on certain subjects and recorded the progress of work on other subjects.

46. In its consideration of this report,²⁶ the Commission expressed its satisfaction with the progress achieved by the Working Group, whose constructive approach to this difficult and important subject was commended by a number of representatives.

47. Most representatives agreed that, consistent with working methods developed in relation to other items, the Commission should not take action on the substantive matters that were in the course of consideration by the Working Group. Several representatives, however, suggested that the Commission should give the Working Group certain guidelines for the continuation of its work. These representatives were of the opinion that the International Convention for the Unification of Certain Rules relating to Bills of Lading (1924 Brussels Convention)²⁷ was outmoded and, therefore, the Working Group should draft a new convention, rather than merely revise the 1924 Brussels Convention and the Protocol to amend that Convention (Brussels Protocol, 1968). In this connexion, it was stated that the new Convention should be based on the carriers contractual responsibility for the safe delivery of the cargo. It was also noted that the new rules should be patterned after other international conventions concerned with the transport of goods, and that correlation of the rules for different types of carriage was vital in view of the growing importance of combined transport operations and containerization and unitization of cargo.

48. Other representatives indicated that, while the 1924 Brussels Convention should be revised, this Convention had been adopted by some 80 countries and its provisions were based on substantial experience which should not be cast aside. Consequently, proposals for changes should be carefully considered and implemented only with a view to the practical advantages that might be derived from such changes. Some representatives observed that, in revising the rules concerning maritime transport, the Working Group should bear in mind that, despite the advances of technology, conditions of ocean transport were still very different from those of other modes of transport. Some representatives were of the view that, due to advances in technology, ocean trans-

portation was far less hazardous than it had been 50 years ago; accordingly, insurance risks of the shipowner or carrier in ocean transportation had decreased dramatically and this should be reflected in the revision of the Brussels Convention of 1924 so as to result in lower freight rates for the shippers.

49. The Commission noted that the Working Group had indicated in its report (A/CN.9/63 and Corr.1, para. 22) that it had been unable to take final action on some of the subjects that had been taken up and that it would be advisable to hold a special session to complete work on these remaining subjects, with priority given to the basic question of the carrier's responsibility. All the representatives who spoke on the subject indicated their agreement with the proposal that a special two-week session of the Working Group should be held in the autumn of 1972 in order to assist the Working Group to complete the task given to it by the Commission. In this connexion, the Commission heard a statement on financial implications by the representative of the Secretary-General.

50. The Commission also welcomed the suggestion made at the third session of the Working Group (A/CN.9/63 and Corr.1, para. 34) by the observer of the International Institute for the Unification of Private Law (UNIDROIT) that the Commission might wish to avail itself of the offer of the Institute to prepare a study on the legal rules that should apply to the carriage of live animals. One representative noted that the UNCTAD secretariat should be requested to prepare any further study it may wish to submit on the economic and commercial aspects of the subject; this suggestion was welcomed by the observer of UNCTAD.

Decision of the Commission

51. The Commission, at its 122nd meeting on 2 May 1972, unanimously adopted the following decision:

"The United Nations Commission on International Trade Law,

"Taking note with appreciation of the report of its Working Group on International Legislation on Shipping;²⁸

"Taking note of the resolution adopted by the Working Group on International Shipping Legislation established by the United Nations Conference on Trade and Development²⁹ by which the Commission has been invited to continue with all deliberate speed its examination of the rules and practices concerning bills of lading with a view to their revision and amplification as appropriate,

"1. Decides that the Working Group on International Legislation on Shipping should continue its work under the terms of reference set forth by the Commission in the resolution adopted at its fourth session³⁰ and complete that work expeditiously;

"2. Considers that the Working Group should give priority in its work to the basic question of the

²⁶ The Commission considered the subject in the course of its 110th, 111th and 122nd meetings held on 24 April and 2 May 1972.

²⁷ League of Nations, *Treaty Series*, vol. CXX (1931-1932), No. 2764.

²⁸ A/CN.9/63 and Corr.1.

²⁹ TD/B/C.4/93, TD/B/C.4/ISL/12, annex I, appendix II, p. 9.

³⁰ *Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971* (United Nations publication, Sales No.: E.72.V.4), part one, II, para. 19.

carrier's responsibility and to that end recommends that the Working Group keep in mind the possibility of preparing a new convention as appropriate, instead of merely revising and amplifying the rules in the International Convention for the Unification of Certain Rules relating to Bills of Lading (1924 Brussels Convention), and the Brussels Protocol, 1968;

"3. *Requests the Secretary-General:*

"(a) To convene a special session of the Working Group at Geneva for two weeks, if feasible in September or October 1972, for the completion of its work in areas left unfinished by it at its third session;

"(b) To convene a regular session of the Working Group in New York from 5 to 23 February 1973 to enable it to examine the remaining areas listed in the resolution adopted by the Commission at its fourth session;³¹

"(c) To provide the Working Group with the material that may be necessary for the performance of its work;

"(d) To accept with appreciation the offer by the International Institute for the Unification of Private Law to prepare a study on the rules which should apply to the carriage of live animals and to invite the Institute to make such a study available to the members of the Working Group."

CHAPTER IV

INTERNATIONAL PAYMENTS

A. *Negotiable instruments*

52. The Commission, at its fourth session, decided to proceed with work directed towards the preparation of uniform rules applicable to a special negotiable instrument for optional use in international transactions; to this end, it requested the Secretary-General to prepare a draft of such rules accompanied by a commentary for submission to the Commission at its fifth session.³²

53. At the present session, the Commission had before it a report of the Secretary-General (A/CN.9/67 and Corr.1) setting forth a draft uniform law on international bills of exchange accompanied by a commentary.³³ The Commission expressed its appreciation for the report of the Secretary-General and acknowledged the valuable contribution made by interested international organizations which had assisted the Secretariat in preparing the draft uniform law on international bills of exchange.³⁴

³¹ *Ibid.*

³² *Ibid.*, para. 35.

³³ The item "Negotiable instruments" was considered by the Committee of the Whole at its 3rd to 5th meetings, on 20, 21 and 24 April 1972, and by the Commission at its 124th meeting, on 4 May 1972.

³⁴ Six meetings with interested international organizations were convened by the Secretariat for consultation purposes. The following international organizations participated in some or all of these meetings: International Monetary Fund (IMF), Organization of American States (OAS), The Hague Conference on Private International Law, International Institute for the Unification of Private Law (UNIDROIT), International

54. Representatives who spoke on the subject noted with appreciation that the working methods followed by the Secretariat in carrying out the work had ensured that the provisions of the draft uniform law took account of current commercial practices in respect of the settlement of international transactions by means of bills of exchange.³⁵

55. The Commission noted that the draft uniform law was concerned with bills of exchange in the narrow sense of the term and did not deal with cheques and promissory notes. The Commission also noted that the Secretariat had made inquiries among banking and trade circles as to the desirability of preparing uniform rules applicable to international promissory notes and that the evidence obtained suggested that this would be feasible. The Commission was unanimously of the opinion that the scope of the draft uniform law should be extended to promissory notes. In respect of cheques, the Commission took note of the different approach to this type of negotiable instrument in the laws patterned on the Geneva Conventions of 1930 and 1931 and in those inspired by the common law tradition; the Commission took the view that the desirability of preparing uniform rules applicable to international cheques and the question whether this can best be achieved by extending the draft uniform law to international cheques or by drawing up a separate uniform law on international cheques could appropriately be considered by the Working Group on International Negotiable Instruments.

56. Some representatives suggested that the Commission should envisage extending the sphere of application of the proposed uniform rules to all commercial negotiable documents employed in international trade transactions. Other representatives, however, opposed this suggestion on the grounds that the decisions and work of the Commission in respect of the harmonization and unification of the law of negotiable instruments had been concerned solely with payment instruments. The Commission, after deliberation, considered that, without prejudice to its future programme of work, the item "negotiable instruments" should for the time being be concerned solely with the drawing up of uniform rules applicable to international bills of exchange, promissory notes and, possibly, cheques.

57. One representative noted that recent developments in payment methods and procedures by electronic means had brought about significant changes in inter-

Bank for Economic Co-operation (IBEC), Bank for International Settlements (BIS), Federation of Banks of the European Communities and International Chamber of Commerce (ICC).

³⁵ In 1969, a questionnaire was addressed to Governments and to banking and trade circles; it was designed to obtain information on current practices followed in making and receiving international payments and on problems encountered in making and receiving international payments by means of negotiable instruments. An annex to that questionnaire elicited views and suggestions on the possible content of uniform rules applicable to a special negotiable instrument to be used in international transactions. An analysis of the 93 replies received to the questionnaire and its annex is contained in document A/CN.9/38 and Add.1 (*Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970, part three, pp. 243-256*) and in document A/CN.9/48.

Supplementary questionnaires, eliciting further information on current international practices and seeking views on the feasibility of tentative uniform rules, were addressed, in 1970 and 1971, to various banking and trade institutions.

national banking practices and expressed the hope that the Commission's work in the field of international payments, either in connexion with the draft uniform law on international bills of exchange or as a separate project, would take account of these developments.

58. Several representatives stated that it was desirable that the Convention on international negotiable instruments should be universal in character.

59. The observer of the International Institute for the Unification of Private Law (UNIDROIT) commented on a note submitted by the Institute (A/CN.9/72) concerning the means of obtaining execution on obligations embodied in an international bill of exchange. The draft uniform law prepared by the Secretariat did not deal with this question, which was therefore left to national law. The observer of the Institute suggested that the Commission consider the feasibility of adopting uniform rules in respect of this issue. Some representatives expressed themselves in favour of this proposal.

60. With respect to the methods of future work, there was consensus that, in accordance with the decision taken by the Commission at its fourth session, a small working group on international negotiable instruments should be established. In this connexion, the Commission heard a statement by the representative of the Secretary-General on the financial implications of the establishment of such a working group. Some representatives were of the opinion that the Secretary-General should be requested to transmit the draft uniform law prepared by the Secretariat to members of the Commission for comments. Other representatives took the view that such comments should be sought at a later stage of the work, after the Working Group had considered the draft uniform law. Several representatives stressed the desirability of further co-operation with interested international organizations and stated that the interorganizational study group set up by the Secretariat should be further utilized in a consultative capacity. Observers of organizations which had been co-operating with the Secretariat in the work on the draft uniform law indicated their readiness to continue such co-operation.

Decision of the Commission

61. The Commission, at its 124th meeting, on 4 May 1972, adopted unanimously the following decision:

"The United Nations Commission on International Trade Law,

"Having taken note of the Secretary-General's report setting forth a draft uniform law on international bills of exchange accompanied by a commentary,³⁶

"Having regard to the decision taken at its fourth session to establish at its fifth session a small working group to be entrusted with the preparation of a final draft to be submitted to the Commission,

"Being aware of the relevance of commercial practices to the formulation of uniform rules and, therefore, of the desirability of close co-operation

and consultation with interested international organizations, including banking and trade organizations,

"1. Decides:

"(a) To establish a Working Group on international negotiable instruments consisting of representatives of Egypt, France, India, Mexico, Nigeria, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America;

"(b) To entrust the Working Group with the preparation of a final draft uniform law on international bills of exchange and promissory notes;

"(c) To request the Working Group to consider the desirability of preparing uniform rules applicable to international cheques and the question whether this can best be achieved by extending the application of the draft uniform law to international cheques or by drawing up a separate uniform law on international cheques, and to report its conclusions on these questions to the Commission at a future session.

"2. Requests the Secretary-General:

"(a) To invite the States members of the Working Group to appoint as their representatives on the Working Group persons specially qualified in the law of negotiable instruments and in banking practices;

"(b) To invite members of the Commission not represented on the Working Group and international organizations having a special interest in the matter to attend the sessions of the Working Group as observers and to recommend that they should be represented by persons especially qualified in the law of negotiable instruments and in banking practices;

"(c) To modify the draft uniform on international bills of exchange with a view to extending its application to international promissory notes and to submit the draft uniform law so modified to the Working Group at its first session;

"(d) To consider the proposal made by the International Institute for the Unification of Private Law that the draft uniform law provide uniform rules in respect of the means by which the execution of obligations embodied in an international bill of exchange can be obtained and to report to the Working Group;

"(e) To carry out further work in connexion with the draft uniform law after consultation with the Commission's Study Group of International Payments, composed of experts provided by interested international organizations and banking and trade institutions, and for these purposes to convene meetings as required.

62. The Commission noted with approval that the Working Group of International Negotiable Instruments had decided to hold its first session in Geneva from 8 to 19 January 1973.

B. Bankers' commercial credits

63. This subject is primarily concerned with work carried out by the International Chamber of Commerce (ICC) regarding the standardization of procedures and practices employed in respect of commercial letters of credit. In 1933, ICC drew up the "Uniform customs and practice for documentary credits", which were

³⁶ A/CN.9/67 and Corr.1.

revised in 1951 and 1962. A third revision is at present being finalized by ICC. At its previous sessions, the Commission, in view of the importance of letters of credit in assuring payment for trade transactions, attached particular importance to the work of ICC in this field and considered it desirable that the views of countries not represented in ICC should be taken into account in the work of revision.³⁷ To this end, the Commission decided to invite Governments and interested banking and trade institutions to communicate their observations on the operation of the "Uniform Customs (1962)" to the Secretary-General, for transmission to ICC.

64. The Commission had before it a note by the Secretary-General containing information on work in progress in respect of, *inter alia*, bankers' commercial credits and a note submitted by ICC setting forth a report by its Commission on Banking Technique and Practice on the progress made in respect of the revision of the "Uniform Customs (1962)".³⁸

65. The observer of ICC informed the Commission of the work of revision of "Uniform Customs (1962)" being carried out at present by the working party which was to a large extent based on the comments received from national committees of ICC and also, through the intermediary of the Secretary-General, from interested circles in countries not represented in ICC.

66. The Commission took note of the report of the working party of the ICC Commission on Banking Technique and Practice and expressed the wish that similar progress reports should be submitted by ICC to the Commission at future sessions. The Commission further expressed the hope that ICC would submit the final text of the revised "Uniform Customs" to the Commission before its final adoption by the competent organs of ICC.

C. Bank guarantees

67. The subject of bank guarantees is concerned with certain types of guarantees employed in international trade. The Commission, at its third session, took note of the fact that ICC had initiated work in respect of performance, tender and repayment guarantees (contract guarantees) and decided to invite ICC to extend the scope of its work and to include guarantees of payment.³⁹ The Commission requested the Secretary-General to circulate, to Governments and banking and trade institutions, questionnaires in respect of these guarantees and to transmit the observations received in response thereto to ICC,⁴⁰ so that the views and sug-

gestions of countries not represented in ICC would be taken into account by ICC in its work.

68. At the present session, the Commission had before it a note by the Secretary-General containing information on work in progress in respect of, *inter alia*, bank guarantees, and a note submitted by ICC setting forth a report on the progress made in respect of contract and payment guarantees.⁴¹

69. The observer of ICC informed the Commission of the progress made by a Joint Working Group of its Commission on Banking Technique and Practice and its Commission on International Commercial Practice. The Joint Working Group had prepared a second version of draft uniform rules for contract guarantees which was approved by the two commissions in March 1972.⁴² The expression "contract guarantees" had been employed by reason of the fact that tender, performance and repayment guarantees could be given either by banks or by other establishments, such as insurance companies. Under article 1 of the draft rules, the rules would be applicable by virtue of a specific reference thereto by the parties in their contract.

70. In respect of performance guarantees, no final conclusion had yet been reached as to whether the rules should be limited to payment by the guarantor in case of non-performance or whether they should also envisage performance by the guarantor of his principal's obligations. Another issue which required further consideration was whether the proposed rules should allow for the so-called guarantee on first demand, under which the beneficiary of the guarantee could be paid without having to justify his demand, or whether the rules should recognize only conditional guarantees under which the guarantor would be obliged to pay only when certain conditions had been fulfilled. The present trend of ICC's work was towards conditional guarantees.

71. In the course of comments made by representatives on the draft uniform rules, it was pointed out that it would be desirable for the rules to contain a legal definition of guarantees and to include provisions relating to the confirmation of a guarantee and the effects of such confirmation. It was further suggested that the proposed rules should not choose between conditional and unconditional guarantees, but should reflect existing trends and current practices. In this respect, it was noted that tender guarantees were usually unconditional, that is, on first demand. However, some representatives favoured the present approach of ICC to concentrate only on certain issues that had proved troublesome in practice; guiding principles should be laid down with a view to modifying current practices in areas of controversy. Representatives favouring this approach were of the opinion that the proposed rules need not deal with every type of guarantee.

72. One representative expressed the view that it was desirable to limit the study on payment guarantees

³⁷ *Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970* (United Nations publication, Sales No.: E.71.V.1), part two, I, paras. 23 and 28; *ibid.*, part two, chap. II, paras. 90-95; *ibid.*, part two, III, paras. 119-126; and *Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971* (United Nations publication, Sales No.: E.72.V.4), part one, II, paras. 36-43.

³⁸ The item "bankers' commercial credits" was considered by the Committee of the Whole at its 1st, 2nd and 7th meetings, on 19 April and 3 May 1972, and by the Commission at its 124th meeting, on 4 May 1972.

³⁹ *Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970* (United Nations publication, Sales No.: E.71.V.1), part two, II, para. 138.

⁴⁰ *Ibid.*

⁴¹ The item "bank guarantees" was considered by the Committee of the Whole at its 1st, 2nd and 7th meetings, on 19 April and 3 May 1972, and by the Commission at its 124th meeting, on 4 May 1972.

⁴² For the text of these draft rules, see note submitted by ICC setting forth the report on progress made in respect of contract and payment guarantees.

only to those guarantees that were issued by banks in favour of exporters of goods in respect of the payment of the purchase price. It was suggested in this connexion that ICC should be invited to prepare a supplementary questionnaire designed to obtain information about this particular type of guarantee. This suggestion was supported by other representatives and by the observer of ICC.

73. The Commission took note of the report of ICC on contract and payment guarantees and expressed the wish that further progress reports would be submitted by ICC to the Commission at future sessions. The Commission further expressed the hope that ICC would submit the final text of the uniform rules on contract and payment guarantees to a future session of the Commission before its final adoption by ICC.

Co-operation between the Commission and ICC

74. At the third and fourth sessions of the Commission, consideration was given to the question of co-operation between the Commission and ICC in respect of the items "bankers' commercial credits" and "bank guarantees".⁴³ It had been suggested at those sessions that ICC should devise a procedure under which countries not represented in ICC could participate more directly in its work in respect of documentary letters of credit and contract and payment guarantees.⁴⁴

75. At the present session, the observer of ICC stated that his organization was in full sympathy with the concern expressed by representatives at previous sessions. Accordingly, the Secretary-General of ICC had proposed further measures for liaison between the Commission and ICC. Thus it was proposed that a delegation of the Commission, or representatives of business circles in countries not represented in ICC, might participate in the meetings of ICC bodies entrusted with the revision of the "Uniform Customs (1962)" and with the drawing up of uniform rules on contract and payment guarantees. The ICC would also be prepared to consider any other workable suggestion which the Commission might wish to make. The observer of ICC stated that his organization hoped that intersecretariat co-operation would continue.

76. The discussion of the issue of co-operation with ICC reflected two main points of view. Some representatives expressed the view that the Commission, as such, should take a more active part in the work of ICC. These representatives felt that, in view of the world-wide character of trade relations, those countries which were not represented in ICC should be able to participate in the work of ICC in respect of documentary letters of credit and bank guarantees on a footing of equality with countries that were represented. One way to achieve this would be to appoint a delegation of the Commission for that purpose or to establish a special liaison committee.

77. Other representatives took the view that such a procedure presented practical difficulties. The Com-

mission itself had not yet considered the work of ICC in detail and, therefore, had not reached agreed conclusions; consequently, a delegation of the Commission could not speak or intervene on behalf of the Commission as a whole.

Decision of the Commission

78. The Commission, at its 124th meeting, on 4 May 1972, adopted unanimously the following decision:

"The United Nations Commission on International Trade Law,

"Being convinced that it should continue its present collaborative arrangements with the International Chamber of Commerce in the areas of documentary credits and guarantees,

"Expressing its appreciation to the International Chamber of Commerce for its willingness to consider favourably any workable procedure which would permit a more satisfactory degree of co-operation between members of the Commission not represented on the International Chamber of Commerce and its bodies entrusted with the revision of the 'Uniform Customs and Practice for Documentary Credits (1962)' and with the elaboration of uniform rules in respect of contract and payment guarantees,

"1. Requests the Secretary-General:

"(a) To transmit the wish of the Commission to the International Chamber of Commerce, that it should arrange for representatives of appropriate banking or trade institutions from interested States members of the Commission to attend meetings of bodies of the International Chamber of Commerce as observers, at their own expense, with the particular purpose of ensuring that the views of interested groups or regions not represented in the International Chamber of Commerce be adequately heard in the deliberations of its bodies;

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

- "(c) (i) To invite the International Chamber of Commerce to prepare a supplementary questionnaire on guarantees of payment issued by a bank in favour of exporters;*
- (ii) To address the questionnaire to Governments and to banking and trade institutions and to transmit the observations received in response to the questionnaire to the International Chamber of Commerce;*
- (iii) To prepare an analysis of the observations received in response to the questionnaire and to submit it to the Commission at a future session;*

"2. Invites the International Chamber of Commerce to submit to the Commission at future sessions:

"(a) Progress reports in respect of its revision of 'Uniform Customs (1962)' and of its work on contract and payment guarantees;

⁴³ *Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970* (United Nations publication, Sales No.: E.71V.1), part two, III, paras. 123, 124 and 136, and *Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971* (United Nations publication, Sales No.: E.72V.4), part one, II, paras. 40-43 and 48.

⁴⁴ *Ibid.*

"(b) The final texts of 'Uniform Customs (1962)' and of the uniform rules on contract and payment guarantees before their final adoption by the International Chamber of Commerce."

CHAPTER V

INTERNATIONAL COMMERCIAL ARBITRATION

79. The Commission, at its second session, appointed Mr. Ion Nestor (Romania) as Special Rapporteur on problems concerning the application and interpretation of the existing Conventions on international commercial arbitration and other related problems.⁴⁵

80. The Special Rapporteur submitted a preliminary report to the Commission at its third session (A/CN.9/49 and Add.1). After consideration of the preliminary report, the Commission extended the mandate of the Special Rapporteur and requested him to submit a final report to the Commission prior to its fifth session.⁴⁶ This report (A/CN.9/64) was before the Commission at its present session.⁴⁷ All representatives who spoke on the subject commended the report of the Special Rapporteur and expressed their appreciation for the suggestions set forth in his report. There was general agreement that the report constituted an excellent basis for further work in the field of international commercial arbitration.

81. Several representatives stressed the importance of arbitration as an effective means for the settlement of disputes in international trade. The view was generally held that the Commission should continue its work in this field.

82. Some representatives referred to circumstances which impeded the settlement of international trade disputes by way of arbitration. It was stated that in developing countries arbitration was not much used in trade relations with developed countries mainly because traders in developed countries often insisted upon arbitration clauses which were drawn up from their own point of view, e.g. by providing that the arbitration should take place in a developed country. Another representative noted that the absence of principles as regards the appointment of arbitrators by the appointing authority contributed to the difficulty of constituting *ad hoc* arbitration tribunals and that it would be advisable to examine this subject.

83. Several representatives and observers stated that the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958⁴⁸ and the European Convention on International Commercial Arbitration of 21 April 1961⁴⁹ should be adhered to by the greatest

possible number of States. It was suggested that the Commission and other organizations concerned with arbitration should persuade a greater number of nations to adhere to those conventions. One representative stated that his delegation was particularly interested in the reasons why many States had not adhered to the above conventions.

84. One representative expressed the view that international co-ordination of the work of existing arbitration organizations could contribute to a more widespread use of arbitration in the settlement of international trade disputes. The observer of the International Law Association suggested that an international commercial arbitration council be established under the auspices of the Commission in order to assist with the effective functioning of arbitration when parties have not specifically designated an arbitral tribunal; in such cases, the council would assist with the designation of arbitrators and with establishing the venue of arbitration and the rules applicable to the proceedings. The observers of UNIDROIT and of the Inter-American Commercial Arbitration Commission stated that an international organization could co-ordinate the work of national and regional arbitration organizations by assisting in the exchange of information and experience among them and by promoting harmonization of their rules.

85. It was generally agreed that the Commission, before taking any decision on the proposals contained in the report of the Special Rapporteur, should obtain the views and comments of Governments and arbitration organizations thereon. Several suggestions were made concerning the ways and means of obtaining such views and comments.

86. Some representatives suggested that a questionnaire be sent to Governments and through Governments, to arbitration organizations in order to obtain their views on what they regarded as the most pressing problems and possible solutions thereto. Other representatives were of the opinion that there was no need for a questionnaire but that, instead, a summary of the proposals of the Special Rapporteur should be prepared. It was also suggested that the report be considered by the Fourth International Congress on Arbitration, to be held at Moscow in October 1972. On the other hand, one representative indicated that the Commission should not invite any organization to consider proposals that the Commission itself had not examined.

Decision of the Commission

87. The Commission, at its 124th meeting, on 4 May 1972, adopted unanimously the following decision:

"The United Nations Commission on International Trade Law

"1. Requests the Secretary-General: to transmit to States members of the Commission the proposals made by the Special Rapporteur in his report⁵⁰ and to invite them to submit to the Secretariat:

"(a) Their comments on the proposals made by the Special Rapporteur, and

⁴⁵ Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, II, para. 112.

⁴⁶ Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970 (United Nations publication, Sales No.: E.71.V.1), part two, III, para. 156.

⁴⁷ The report was considered by the Committee of the Whole at its 4th and 5th meetings, on 21 April 1972, and by the Commission at its 124th meeting, on 4 May 1972.

⁴⁸ United Nations, Treaty Series, vol. 330 (1959), No. 4739.

⁴⁹ United Nations, Treaty Series, vol. 484 (1963-1964), No. 7041.

⁵⁰ A/CN.9/64.

"(b) Any other suggestions and observations they may have regarding unification and harmonization of the law of international commercial arbitration;

"2. Also requests the Secretary-General: to submit a report to the Commission at its sixth session summarizing the comments, suggestions and observations of States members of the Commission and setting out proposals regarding steps which the Commission may wish to consider with regard to unification in the field of international commercial arbitration."

CHAPTER VI

TRAINING AND ASSISTANCE IN THE FIELD OF INTERNATIONAL TRADE LAW

88. The Commission, at its fourth session, requested the Secretary-General to continue consultations with other interested organizations with a view to developing programmes of training and assistance in the field of international trade law. In particular, the Secretary-General was requested to consider means whereby practical experience in this field could be made available to nationals from developing countries through the co-operation of trading and financial institutions in developed countries.⁵¹

89. At the present session, the Commission had before it a report of the Secretary-General (A/CN.9/65) setting forth the activities that had been undertaken pursuant to the Commission's decisions and outlining a proposal for future action.⁵²

90. All representatives who spoke on the subject stressed the need of developing countries for an effective programme of training and assistance in the field of international trade law. Several representatives stated that while they were appreciative of the steps taken by the Secretary-General to implement the decisions of the Commission, they hoped that the Secretariat would accelerate and intensify its activities in this field in accordance with the wish expressed by the General Assembly in resolution 2766 (XXVI).

91. Satisfaction was also expressed that some of the recipients of the United Nations/UNITAR fellowships had received training at the Office of Legal Affairs and it was hoped that this training would continue in future years. 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 present efforts to secure funds for this project.

92. Several members reiterated their support for the proposal of the secretariat of the Inter-Governmental Maritime Consultative Organization (IMCO) for a programme of assistance to developing countries in the field of laws and regulations applicable to ships

and shipping, under the joint auspices of IMCO, the United Nations Conference on Trade and Development (UNCTAD) and the Commission. The Commission was informed by the observer for IMCO that its Legal Committee had recently decided to recommend to the competent organs of the organization the adoption of such a proposal on the understanding that its implementation would not result in additional financial implications to IMCO.

93. Several representatives expressed regret that developed countries that were members of UNCITRAL had not been able to respond more positively to the request of the Secretary-General to ascertain which commercial and financial establishments within their respective countries would be willing to receive interns from developing countries. It was suggested that the Secretary-General should extend his inquiry to all developed countries Members of the United Nations and urge them to respond favourably.

94. Tribute was paid to those international governmental and non-governmental organizations that had developed special programmes of training and assistance in matters related to international trade law for the benefit of nationals of developing countries, and the hope was expressed that other organizations would follow suit.

95. Some representatives stated that, while they were aware of the financial and administrative difficulties involved in organizing seminars on international trade law in connexion with annual sessions of the Commission, they were nevertheless in favour of such seminars. They suggested that the Secretariat might consider the organization of seminars of a more limited nature than those organized by the International Law Commission and examine whether these seminars could be financed by independent sources.

96. Several representatives welcomed the proposal of the Secretary-General for the organization of an international symposium on the role of universities and research centres in the teaching, development and dissemination of international trade law and requested the Secretariat to explore the feasibility of this proposal and to report its findings to the Commission at its sixth session. In this connexion, the suggestion was made that the participation of Government officials in such a symposium would be desirable.

Decision of the Commission

97. The Commission, at its 124th meeting on 4 May 1972, adopted unanimously the following decision:

"The United Nations Commission on International Trade Law

"1. Requests the Secretary-General to accelerate and intensify the activities relating to the implementation of the Commission's programme on training and assistance in the field of international trade law;

"2. Further requests the Secretary-General to explore the feasibility of organizing an international symposium on the role of universities and research centres in the teaching, development and dissemination of international trade law and to report his findings to the Commission at its sixth session."

⁵¹ *Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971* (United Nations publication, Sales No.: E.72.V.4), part one, II, para. 145.

⁵² The item "Training and assistance in the field of international trade law" was considered by the Committee of the Whole at its 6th meeting, on 24 April 1972, and by the Commission at its 124th meeting, on 4 May 1972.

CHAPTER VII

YEARBOOK OF THE COMMISSION

98. The General Assembly of the United Nations, by resolution 2502 (XXIV), approved in principle the establishment of a yearbook of the Commission and authorized the Secretary-General to establish such a yearbook in accordance with the decisions and recommendations of the Commission. At its third session, the Commission decided to include in the first volume of the *Yearbook* the material of the first three sessions of the Commission;⁵³ this volume was published in 1971.⁵⁴

99. At its fourth session, the Commission requested the Secretary-General to publish the second volume of the *Yearbook*, which covered the materials of the fourth session of the Commission and approved the guidelines for the contents of future volumes⁵⁵ as recommended in a report of the Secretary-General (A/CN.9/57 and Corr.1, para. 9). The Commission decided to take final action on the timing of the publication of future volumes of the *Yearbook* at its fifth session.⁵⁶

100. At the present session, the Commission had before it a report of the Secretary-General (A/CN.9/66) which contained a suggestion regarding the timing of future volumes of the *Yearbook*, an outline of the contents of the third volume and the financial implications of the publication of that volume.⁵⁷ One language version of the second volume of the *Yearbook*, published in accordance with the decision of the Commission mentioned in paragraph 99 above, was placed before the Commission.⁵⁸

101. All representatives who took the floor welcomed the publication of the second volume of the *Yearbook* and expressed confidence that it would be as valuable as the first volume, which had contributed to the dissemination of the work of the Commission beyond the forum of the United Nations.

102. With respect to the timing of future volumes of the *Yearbook*, all representatives who spoke on the subject supported the recommendation of the Secretary-General that the *Yearbook* be published on an annual basis and appear as soon as practicable following the Commission's session to which the particular volume related. 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.

⁵³ *Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970* (United Nations publication, Sales No.: E.71.V.1), part two, III, para. 178.

⁵⁴ *Yearbook of the United Nations Commission on International Trade Law, Volume I: 1968-1970* (United Nations publication, Sales No.: E.71.V.1).

⁵⁵ *Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971* (United Nations publication, Sales No.: E.72.V.4), part one, II, para. 125.

⁵⁶ *Ibid.*

⁵⁷ The item "Yearbook of the Commission" was considered by the Committee of the Whole at its 6th meeting, on 24 April 1972, and by the Commission at its 124th meeting on 4 May 1972.

⁵⁸ *Yearbook of the United Nations Commission on International Trade Law, Volume II: 1971* (United Nations publication, Sales No.: E.72.V.4).

103. Representatives generally agreed that the third volume of the *Yearbook* should contain the material of the fifth session of the Commission as outlined in the Secretary-General's report (A/CN.9/66, annex I). It was noted that the report of the Secretary-General envisaged including in this volume of the *Yearbook* the summary records of the Commission's meeting relating to the draft Convention on Prescription (Limitation) in the International Sale of Goods on the ground that these records would be part of the *travaux préparatoires* of the Convention.⁵⁹ Some representatives expressed doubts as to the need to include these summary records in the *Yearbook* since the draft Convention would be subject to discussion before an international conference of plenipotentiaries or other body, such as the Sixth Committee of the General Assembly. Other representatives stated that these summary records would be of value in interpreting the Convention and indicated that they should be included in the *Yearbook*. In the light of these considerations, it was suggested that the Secretariat should explore the possibility of reproducing these summary records in a less expensive form in connexion with the *Yearbook*.

Decision of the Commission

104. The Commission, at its 124th meeting, on 4 May 1972, adopted unanimously the following decision:

"The United Nations Commission on International Trade Law"

"1. *Decides* that future volumes of the *Yearbook of the United Nations Commission on International Trade Law* should be published on an annual basis and should be issued in English, French, Spanish and Russian as soon as practicable following the Commission's session to which the particular volume relates;

"2. *Requests* the Secretary-General to publish, in the third volume of the *Yearbook*, the material on the work of the fifth session of the Commission following in general the outline set forth in annex I to the report of the Secretary-General on the timing and content of the *Yearbook*,⁶⁰ taking due account of the suggestions made during the discussion of this subject."

CHAPTER VIII

FUTURE WORK

105. The Commission considered its future work in the light of (a) a proposal by the Spanish delegation concerning methods of work (A/CN.9/L.22); (b) a letter, dated 10 April 1972, addressed by the Legal Counsel of the United Nations to the Chairman of the Commission with respect to the necessity for financial restraint in planning the work of the Organization and (c) a statement by the Secretary-General of the Inter-

⁵⁹ Among the guidelines for the content of the *Yearbook* that were approved by the Commission at its fourth session was the directive that summary records should not be included in the yearbook "unless they would serve as *travaux préparatoires* of a legal text" (see document A/CN.9/57 and Corr.1, paragraph 9, and the decision of the Commission referred to in foot-note 55, *supra*).

⁶⁰ A/CN.9/66.

national Institute for the Unification of Private Law (UNIDROIT), seeking the views of the Commission in respect of certain draft Conventions drawn up under the auspices of the Institute.⁶¹

A. Methods of work

106. The representative of Spain introduced the proposal of his delegation (A/CN.9/L.22). In his view, the Commission, in planning its future work, should give consideration to the following points:

(a) The Commission should establish guidelines with regard to the drafting or revising of texts, which should be entrusted to one expert or to a small group of experts, or to an organization of proved competence;

(b) The work of drafting should always be based on a system of continuity in time and should not be interrupted between sessions of the Commission;

(c) When a draft is prepared, the Commission should ascertain whether it was consonant with the established guidelines and should refer it to the expert or experts who prepared it for revision only if those guidelines had not been respected;

(d) The Commission should intensify its efforts to co-ordinate the activities of other international bodies dealing with the unification of international trade law. To that end, at the start of each session, the Commission should be informed by the Secretariat about the work being carried out by those bodies and should promote co-operation between those bodies and programme future methods of unification, endeavouring in all cases to avoid duplication of effort and loss of time;

(e) The Commission should increase the dissemination of existing international instruments, in order to promote the broadest possible accession to them, paying special attention to the interests of developing countries;

(f) In view of financial considerations, ways and means should be devised to enable the Commission to carry out its work in the most effective way possible.

107. Representatives who commented on the Spanish proposal expressed their appreciation for the suggestions made by the Spanish delegation for reviewing and improving the working methods of the Commission in order to enhance its efficiency. In the course of the discussion of that proposal various views were submitted for consideration by the Commission. The Commission decided to refer the Spanish proposal and the statements of representatives commenting on that proposal to a sessional Working Group consisting of the representatives of Brazil, Ghana, Spain, the Union of Soviet Socialist Republics and the United States of America.

108. The Working Group held a number of meetings during the Commission's session and, after consulting the Secretariat on financial implications, recommended that the Commission should consider the following measures:

(a) As a general rule, sessions of working groups should be extended to three weeks;

(b) Consequently, sessions of the Commission could be reduced to two weeks, keeping in mind, however, the items for each session in order to allow for any necessary extension of the plenary session for a given year;

(c) The Commission should foster a spirit of accommodation in its work;

(d) The activity of working groups should be intensified and they should be encouraged to consider methods of work that would enhance efficiency, which might include, where appropriate and within available resources, the use of experts belonging to the working groups or provided by the Secretariat;

(e) As a general rule, the size of future working groups should be limited to the extent consistent with the representation of viewpoints represented in the Commission.

109. Many representatives commended the conclusions reached by the Working Group. A number of representatives emphasized that the proposals set forth in subparagraphs (a) and (b) or paragraph 108 above were interrelated and not intended to be implemented separately. Several representatives, however, while stating that working methods could be further refined, expressed preference for a more pragmatic approach. In their view, the Commission should plan its future work in accordance with the exigencies of individual topics. Other representatives were of the opinion that the proposals of the Working Group might shift the power of the Commission to the various working groups, which would be undesirable. The view was also expressed that the Commission should not be pessimistic about the results it had achieved during its five years of existence; important progress had been made in the fields of international sale, international shipping legislation, international payments and arbitration and the Commission had, at the present session, finalized a draft uniform law on prescription (limitation).

110. The Commission, after deliberation, agreed to reconsider the question of working methods at its sixth session.

B. Letter from the Legal Counsel of the United Nations to the Chairman of the Commission

111. The Chairman informed the Commission of the contents of a letter, dated 10 April 1972, addressed to him by the Legal Counsel of the United Nations. In that letter, the Legal Counsel communicated the view of the Secretary-General that the present financial situation of the United Nations made some measure of budgetary restraint unavoidable. Although the Secretary-General did not suggest that the application of a policy of financial restraint necessarily meant that new programmes and activities could not be undertaken, he invited all United Nations Councils, Commissions and Committees to seek to accommodate new programmes within the staff resources that had become available as a result of the completion of prior tasks or by the assignment of a lower order of priority to certain continuing activities.

112. The Commission took note of the message of the Secretary-General and took account of his observations in planning its programme of future work.

⁶¹ The Commission considered questions relating to its future work at its 109th, 110th, 122nd and 125th meetings, on 20 and 22 April and 2 and 5 May 1972.

C. Legal texts prepared under the auspices of the International Institute for the Unification of Private Law

113. The Secretary-General of UNIDROIT informed the Commission that UNIDROIT had drawn up a draft Uniform Law in respect of the Conditions of Validity of Contracts of the International Sale of Goods, and that this draft Uniform Law would shortly be submitted to the Governing Council of UNIDROIT for approval. Work was also being carried out by a Committee of Governmental Experts on a draft Uniform Law on Agency of an International Character in the Sale and Purchase of Goods. Since these drafts were related to the sale of goods, the Governing Council of UNIDROIT might wish to submit these drafts to the Commission for consideration.

114. The Commission took note of the statement by the Secretary-General of UNIDROIT. It noted that the draft Uniform Law on Agency was still in the course of preparation and that neither draft had yet been approved by the Governing Council of UNIDROIT. The

Commission agreed that, if UNIDROIT should transmit one or both of the draft Uniform Laws with the request that they be communicated to the members of the Commission, the Secretary-General should, in accordance with past practice, transmit such drafts to the members of the Commission.

D. Date of the sixth session

115. The Commission *decided*, at its 125th plenary meeting on 5 May 1972, that its sixth session, to be held at the United Nations Office at Geneva, should meet from 2 to 13 April 1973. The Commission requested the Secretary-General to make arrangements under which the session could be extended, if necessary, until 18 April 1973.

ANNEX

List of documents before the Commission

[Annex not reproduced; see check list of UNCITRAL documents at the end of this volume].

B. List of relevant documents not reproduced in the present volume

<i>Title or description</i>	<i>Document reference</i>
Register of experts and scholars in international trade law: supplement to the register of experts and scholars in international law	A/CN.9/61
Training and assistance in the field of international trade law: report of the Secretary-General	A/CN.9/65
Timing and contents of the UNCITRAL Yearbook: report of the Secretary-General	A/CN.9/66
Provisional agenda and annotations: note by the Secretary-General	A/CN.9/68
General conditions of sale and standard contracts: report by the Secretary-General	A/CN.9/69
Current activities of international organizations related to the harmonization and unification of international trade law: report of the Secretary-General	A/CN.9/71
Proposal by the Spanish delegation concerning the method of work for the fifth session of the United Nations Commission on International Trade Law ..	A/CN.9/L.22
Recommendation of the Working Group on Methods of Work	A/CN.9/V/CRP.23
Draft report of the Committee of the Whole to the Commission	A/CN.9/V.CRP.24
Draft report of the United Nations Commission on International Trade Law on the work of its fifth session (10 April to 5 May 1972)	A/CN.9/V/CRP.24/ Rev.1 and CRP.28 and Add.1 to 5
List of delegations	A/CN.9/INF.4
Summary records of the fifth session of the Commission	A/CN.9/SR.92-125