



Agenda item 88:* Progressive development of the law of international trade**

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* For the discussion of this item, see *Official Records of the General Assembly, Twenty-first Session, Sixth Committee*, 946th to 953rd and 955th meetings; *ibid.*, *Fifth Committee*, 1170th meeting; and *ibid.*, *Plenary Meetings*, 1497th meeting.

** This question was also discussed by the General Assembly at the twentieth session (agenda item 92).

DOCUMENTS A/6396 AND ADD.1 AND 2

Report of the Secretary-General

DOCUMENT A/6396***

[Original text: English and French]
[23 September 1966]

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† Note: The designations employed and the presentation of the material in this report do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country or territory or of its authorities, or concerning the delimitation of its frontiers.

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Introduction

1. This report is submitted pursuant to resolution 2102 (XX), adopted by the General Assembly on 20 December 1965.

2. In the discharge of his responsibilities under the terms of operative paragraph 1 of that resolution, the Secretary-General retained the services of Professor Clive M. Schmitthoff of the City of London College, a well-known authority on the law of international trade, who was requested to prepare a preliminary study on the subject.

3. On the basis of Dr. Schmitthoff's study the Secretary-General prepared a draft report which was

sent for comments to the following experts: Dra. Margarita Arguas (Argentina), Dr. Taslim O. Elias (Nigeria), Professor Gyula Eörsi (Hungary), Professor Willis L. Reese (United States), and Professor Mustafa Kamil Yasseen (Iraq).

4. The experts consulted expressed agreement with the conclusions reached in the report and with the suggestions made therein. They also contributed valuable comments and proposals, which were taken into account in the preparation of the final version of this report.

5. During the debate on this item in the Sixth Committee it was agreed that "consultations with the International Law Commission, other United Nations organs

and autonomous institutions should be conducted informally by the Secretary-General."¹ Accordingly, the views of the Commission were sought as to whether it would be in a position to undertake additional responsibilities in the area of international trade law. The Secretary-General has been advised that, in view of its manifold activities and responsibilities and considering its extensive agenda, the Commission does not believe that it would be appropriate for it to become responsible for work in the field of the progressive development of the law of international trade.

6. In the preparation of this report the Office of Legal Affairs consulted the Secretariat units most directly concerned, namely, the Department of Economic and Social Affairs, the Centre for Industrial Development, the United Nations Conference on Trade and Development (UNCTAD), and the United Nations regional economic commissions. Consultations were also conducted with the following specialized agencies: the Inter-Governmental Maritime Consultative Organization (IMCO), the International Bank for Reconstruction and Development (IBRD), and the International Civil Aviation Organization (ICAO); and with the following other institutions: International Institute for the Unification of Private Law (UNIDROIT), the Hague Conference on Private International Law, the International Chamber of Commerce (ICC), and the United International Bureaux for the Protection of Intellectual Property (BIRPI).

7. The Secretary-General wishes to record his appreciation for the useful comments and suggestions received; some of these suggestions have been incorporated in the report. While it was not feasible to publish all of the comments received in the course of these consultations, in order to provide the General Assembly with as much information as possible, certain observations submitted by The Hague Conference on Private International Law and by the International Institute for the Unification of Private Law, being of a more general nature, are given in an addendum to this report (A/6396/Add.1).

8. This report consists of four chapters. Chapter I describes the scope of the concept of "law of international trade" and the techniques used to reduce conflicts and divergencies arising from the laws of different countries in matters relating to international trade. It also contains a brief historical survey of the different stages through which the law of international trade has developed. Chapter II consists of a broad survey of the work done by inter-governmental organizations and groupings and by non-governmental organizations in the harmonization and unification of the law of international trade as well as on directly related subjects. Chapter III deals with the methods used in the progressive harmonization and unification of the law of international trade and discusses some of the advantages and disadvantages of world-wide, regional and other approaches. It also indicates topics which might be suitable for harmonization and unification. Chapter IV discusses the progress and shortcomings of the work done until now in this field, the desirable action to remedy such shortcomings and the possible role of the United Nations in furthering the progressive development of the law of international trade. Finally, the report discusses the possibility of establishing a United

Nations commission on international trade law and suggests the functions and responsibilities of the commission and its secretariat.

9. There are also three annexes to the report containing additional data on the activities of organizations concerned with the subject and other relevant information.

I. The law of international trade

A. Concept of "law of international trade"

10. For the purposes of General Assembly resolution 2102 (XX) and as used in this report, the expression "law of international trade" may be defined as the body of rules governing commercial relationships of a private law nature involving different countries. This definition is consistent with the concept of the law of international trade described in the explanatory memorandum of the Permanent Representative of Hungary² and in the Secretariat note submitted to the twentieth session of the General Assembly, which listed the following as examples of topics falling within the scope of the law of international trade:³

- (a) International sale of goods:
 - (i) Formation of contracts;
 - (ii) Agency arrangements;
 - (iii) Exclusive sale arrangements.
- (b) Negotiable instruments and banker's commercial credits.
- (c) Laws relating to conduct of business activities pertaining to international trade.
- (d) Insurance.
- (e) Transportation:
 - (i) Carriage of goods by sea;
 - (ii) Carriage of goods by air;
 - (iii) Carriage of goods by road and rail;
 - (iv) Carriage of goods by inland waterways.
- (f) Industrial property and copyright.
- (g) Commercial arbitration.

11. The scope of this report does not extend to international commercial relations on the level of public law, such as those relating to the attitude and behaviour of States when regulating, in the exercise of their sovereign power, the conduct of trade affecting their territories. Illustrations of commercial relationships of this type are bilateral treaties of commerce or multilateral treaties such as the General Agreement on Tariffs and Trade (GATT) or the Rome Treaty establishing the European Economic Community. International commodity arrangements are also excluded from the scope of this report.

12. On the other hand, international commercial relations on the level of private law entered into by governmental and other public bodies or, particularly in countries of centrally planned economy, by foreign trade corporations, are deemed to be included within the definition of the law of international trade.

13. Another area within the concept of the law of international trade is that of conventions, the object of which is the regulation of a topic of international trade law, such as the Brussels Convention of 1924 for the Unification of Certain Rules relating to Bills of Lading

¹ See *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 92, document A/6206, para. 18.

² *Ibid.*, *Nineteenth Session, Annexes*, annex No. 2, document A/5728.

³ *Ibid.*, *Twentieth Session, Annexes*, agenda item 92, document A/C.6/L.572, para. 3.

for the Carriage of Goods by Sea, the Hague Convention of 1964 relating to a Uniform Law on the International Sale of Goods (Corporeal Movables), The Hague Convention of 1964 relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (Corporeal Movables), and The Hague Convention on the Law Applicable to International Sales of Corporeal Movables of 15 June 1955.

B. Legal techniques used to reduce conflicts and divergencies

14. As indicated in the preamble to General Assembly resolution 2102 (XX), "conflicts and divergencies arising from the laws of different States in matters relating to international trade constitute an obstacle to the development of world trade".

15. In order to reduce such conflicts and divergencies two basic techniques have been followed, which are different but complementary: the first relates to the choice of law rules within the framework of private international law, and the second relates to the progressive unification and harmonization of substantive rules.

1. CHOICE OF LAW RULES

16. The purpose of the first technique is to establish rules regulating the conflict of laws, i.e., rules relating to the choice of competing substantive laws applicable to a particular transaction, and rules governing the determination of the competence of courts in a particular litigation. This has been described as the "clinical" method of "finding the best possible solution of the acute case at bar".⁴ The Bustamante Code, Book II of which is entitled "International Commercial Law", is the most comprehensive attempt made so far to establish conflict rules in the field of the law of international trade (see paras. 129-130 below). The contribution of The Hague Conference on Private International Law in this area is described in paragraphs 38 to 49 below.

2. HARMONIZATION AND UNIFICATION OF SUBSTANTIVE RULES

17. The second, which has been described as the "preventive" method, has the purpose of avoiding law conflicts.⁵ The contribution of the International Institute for the Unification of Private Law, which is the organization most directly specializing in this subject, is described in paragraphs 27 to 37 below.

18. The most effective method of conflict avoidance is undoubtedly the universally accepted regulation of a particular transaction. There can be no conflict of laws where a common solution is accepted by all municipal laws. Thus, before the Reformation, law conflicts relating to the validity and dissolution of marriage

—which are so frequent today—hardly existed in Western Europe because the law of the Roman Catholic Church was universally accepted in that area.

19. Of a similar nature was the mediaeval law merchant. In the structure of mediaeval society the merchants formed a cosmopolitan class which was active at the fairs, markets and ports of all European countries. Commercial custom, universally accepted, developed legal institutions which, to the present day, are the normal instruments of international trade. Amongst them are the bill of exchange, the bill of lading, insurance, the commercial corporation and the customs of the sea.

C. Development of the law of international trade

20. The development of the law of international trade has gone through three stages. In the first phase it appeared in the form of the mediaeval *lex mercatoria*, a body of universally accepted rules.⁶ In the second stage it was incorporated into the municipal law of the various national States which succeeded the feudal stratification of mediaeval society. The culmination of this development was the adoption in France of the *Code de commerce* of 1807,⁷ in Germany the promulgation of the *Allgemeine Handelsgesetzbuch* of 1861,⁸ and in England the incorporation of the custom of merchants into the common law by Lord Mansfield.⁹ The third stage in the development of the law of international trade is contemporary. Commercial custom has again developed widely accepted legal concepts, particularly such trade terms as f.o.b. and c.i.f., and the institution of the bankers' commercial credit, and international conventions have brought a measure of unification in important branches of the law of negotiable instruments, of transport by sea, air and land, of arbitration and other topics.

21. The law of international trade in the third stage of its development shows three characteristics. First, the rules of international trade exhibit a remarkable similarity in all municipal jurisdictions. Secondly, their application in the various municipal jurisdictions is provided for by authority of the national sovereigns. Thirdly, their formulation is brought about by international agencies created by Governments or by non-governmental bodies. These three characteristics require further examination.

1. SIMILARITY

22. The similarity of the law of international trade transcends the division of the world between countries of free enterprise and countries of centrally planned economy, and between the legal families of the civil law of Roman inspiration and the common law of English tradition.¹⁰ As a Polish scholar observed, "the law of external trade of the countries of planned economy does not differ in its fundamental principles from the law of

⁴ See Hilding Eek, *The Swedish Conflicts of Laws* (The Hague, Nijhoff, 1965), p. 272.

⁵ As the representative of China observed, "...should the various countries succeed in enacting uniform rules of substantive law, the rules of private international law would no longer be relevant since those rules presupposed that municipal laws would remain intact and merely sought to mitigate the disadvantages arising from them." He recalled "Beckett's comment that private international law was in a sense the antithesis of the universal unification of law. Its *raison d'être* was the existence in different countries and sometimes in the very same country of different systems of law... both the process of codification of private international law and that of unification of private law were designed to promote international trade, provided they advanced by degrees and did not turn out to have aims which were incompatible." (See *Official Records of the General Assembly, Twentieth Session, Sixth Committee*, 895th meeting, paras. 13 and 15.)

⁶ See e.g., Gérard de Malynes' *Lex Mercatoria*, first published in 1636.

⁷ Preceded by the *Ordonnance sur le commerce* of Louis XIV of 1673 and Colbert's *Ordonnance de la marine* of 1681.

⁸ Preceded by the *Allgemeine Wechselordnung* of 1848. The *Allgemeine Handelsgesetzbuch* of 1861 is still in operation in Austria; in Germany it was superseded by the *Handelsgesetzbuch* of 1897.

⁹ See T. F. T. Plucknett, *A Concise History of the Common Law*, 4th ed., (London, Butterworth, 1948), p. 332.

¹⁰ See Clive M. Schmitthoff, "The Law of International Trade, Its Growth, Formulation and Operation" in *The Sources of the Law of International Trade with special reference to East-West Trade*, edited by Clive M. Schmitthoff (New York, Praeger, 1964), p. 3.

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external trade of other countries, such as e.g., Austria or Switzerland. Consequently, international trade law specialists of all countries have found without difficulty that they speak a 'common language'.¹¹

23. The reason for this universal similarity of the law of international trade is that this branch of law is based on three fundamental propositions: first, that the parties are free, subject to limitations imposed by the national laws, to contract on whatever terms they are able to agree (principle of the autonomy of the parties' will); secondly, that once the parties have entered into a contract, that contract must be faithfully fulfilled (*pacta sunt servanda*) and only in very exceptional circumstances does the law excuse a party from performing his obligations, viz., if *force majeure* or frustration can be established; and, thirdly, that arbitration is widely used in international trade for the settlement of disputes, and the awards of arbitration tribunals command far-reaching international recognition and are often capable of enforcement abroad.

2. APPLICATION

24. It is generally recognized that the modern law of international trade is not imposed by an international legislator or applied in the municipal jurisdictions *proprio vigore* as part of the *jus gentium*. The law of international trade is applied in the municipal jurisdictions by leave and licence of the national sovereigns.¹² It follows that national public policy or *ordre public* of a particular State will, in principle, override or qualify a rule of international trade law. It has been observed that "in the application of the rules of international trade internal order is sufficiently protected by *ordre public*, and there is, therefore, no need for restriction of the scope of their application by postulating the requirement of bilateral application".¹³

3. FORMULATION

25. The formulation of the rules of international trade by international "formulating agencies" is the outstanding characteristic of the modern development of international trade law. Some of these agencies are United Nations organs, as for example, the Economic Commissions for Europe, Asia and the Far East, Latin America and Africa. Others are inter-governmental organizations, as for example, the International Institute for the Unification of Private Law, the Hague Conference on Private International Law, the Council for Mutual Economic Assistance. Some agencies are formed by merchants, for example, the International Chamber of Commerce and the International Maritime Committee and others by international jurists, such as the International Law Association. The work of the aforementioned, as well as of other "formulating agencies" is described in chapter II of the present report.

II. Survey of the work in the field of harmonization and unification of the law of international trade

26. This chapter contains a brief description of the inter-governmental organizations and groupings and the

non-governmental organizations which have been active in this field, together with a survey of their work in the progressive harmonization and unification of the law of international trade. In order to provide the General Assembly with a broad picture of the subject, the survey has in some cases been extended to activities which, although they might not fall strictly within the purview of international trade law, are directly related thereto.

A. Inter-governmental organizations

1. THE INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

27. The Institute, which is generally referred to as UNIDROIT or the Rome Institute, has its seat at Rome and was established by a multilateral treaty in 1926 under the aegis of the League of Nations. Its present constitution is contained in the Statute of the Institute of 15 March 1940, as amended in June 1957, July 1958 and December 1963. Article 2 of the Statute provides that the Institute "is an international body responsible to the participating Governments", and according to Article 5 the General Assembly of the Institute "shall consist of one representative from each of the participating Governments". Governments other than the Italian Government are represented by their diplomatic representatives accredited to the Italian Government, or by their deputies.

28. At present, the Governments of forty-three countries¹⁴ are members of UNIDROIT. Geographically twenty-four of the member countries are European, eleven are Latin American, five are Asian, two are African and one is North American. The majority of the member countries consist of countries of free enterprise economy. Although at the present time most of the member countries are European, the Institute is engaged in efforts to expand its membership.

29. The work of the Rome Institute in the preparation of draft conventions is widely recognized as being of great value. A list of the items currently on the working programme of the Institute and a list of items on which the Institute has been working in the past will be found in annex II.

30. The drafts prepared by the Institute formed the basis of conventions which have been adopted by diplomatic conferences, notably the Convention relating to a Uniform Law on the International Sale of Goods (Corporeal Movables) and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (Corporeal Movables) which were concluded at the Diplomatic Conference on the Unification of Law governing the International Sale of Goods convened by the Government of the Netherlands and held at The Hague in April 1964. The Conventions were opened for signature on 1 July 1964. Of the twenty-seven States which signed the Final Act of the Conference, all but three (Bulgaria, Hungary and Yugoslavia) are countries of free enterprise economy and geographically twenty-two are located in Europe, three in Latin America and North America and two in

¹¹ See Henryk Trammer, "The Law of Foreign Trade in the Legal Systems of the Countries of Planned Economy," *ibid.*, p. 42.

¹² See Clive M. Schmitthoff, "The Law of International Trade, Its Growth, Formulation and Operation," *ibid.*, p. 4.

¹³ See Aleksandar Goldstajn, "International Conventions and Standard Contracts as Means of Escaping from the Application of Municipal Law," *ibid.*, p. 109.

¹⁴ Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, Colombia, Cuba, Denmark, Ecuador, Federal Republic of Germany, Finland, France, Greece, Holy See, Hungary, India, Iran, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Yugoslavia.

Asia. Any State Member of the United Nations or any of the specialized agencies may become a party to these Conventions.¹⁵

31. The work of the Rome Institute on the international codification of the law relating to the sale of goods and connected topics includes also four uniform laws in preparation, viz., on the conditions of validity of the contract of sale; on the protection of the bona fide purchaser of goods (corporeal movables); on the contract of commission on the international sale or purchase of goods (draft convention); and on credit sale and hire-purchase.

32. Draft conventions of the Rome Institute relating to topics other than the sale of goods likely to be considered by diplomatic conferences in 1967 are the following: the draft convention on the contract for the international carriage of passengers and luggage by road; the draft convention on the contract of international combined carriage of goods; and the draft convention on the contract of forwarding agency in the international carriage of goods.

33. Some of the drafts of the Rome Institute were not submitted directly to diplomatic conferences but formed the basis for measures promoted by other international agencies. Thus, the Draft Convention on the Contract for the International Transport of Goods by Roads formed the basis of the Convention on the Contract for the International Carriage of Goods by Road (CMR), concluded under the auspices of the United Nations Economic Commission for Europe in 1956; and the Draft Uniform Law on Compulsory Insurance of Motorists formed the basis of the Benelux Treaty of 1955 on the Compulsory Insurance against Civil Liability in respect of Motor Vehicles, and the European Convention on Compulsory Insurance of Motorists, concluded under the auspices of the Council of Europe.

34. Apart from these proposals for the unification of particular topics of private law, the Rome Institute is engaged in research into ways and means of advancing the task of unification.¹⁶ It is, in particular, preparing two studies: one on methods of unification and harmonization of law, and the other on measures designed to ensure uniformity of interpretation of uniform laws.

35: The Rome Institute has issued a number of valuable publications, the most important of which are:

¹⁵ For analyses and comments on The Hague Conventions, see e.g. Philippe Kahn, "La Convention de la Haye du 1er juillet 1964 portant loi uniforme sur la vente internationale des objets mobiliers corporels" in *Revue trimestrielle de droit commercial* (Paris), vol. 17, 1964, p. 45; John Honnold, "The Uniform Law for the International Sale of Goods: The Hague Convention of 1964" in *Law and Contemporary Problems* (Durham, North Carolina), vol. 30, 1965, p. 326; Harold Berman, "The Uniform Law on International Sale of Goods: A Constructive Critique," *ibid.*, p. 354; Gunnar Lagergren, "The Uniform Law on Formation of Contracts for the International Sale of Goods" in *Journal of Business Law* (London, 1966), p. 22; Ernst von Caemmerer, "Internationales Kaufrecht" in *Festschrift für Hans Carl Nipperdey...* (Munich, Beck, 1955), p. 211; André Tunc, *Commentary of The Hague Convention of 1 July 1964 on the International Sale of Goods and on the Formation of Contracts of Sale* (The Hague, Ministry of Justice 1966); Jorge Barrera Graf, *La Reglamentación uniforme de las compraventas internacionales de mercaderías* (México, D.F., Universidad Nacional Autónoma, 1965).

¹⁶ See Antonio Malintoppi, "The Uniformity of Interpretation of International Conventions on Uniform Laws and of Standard Contracts," in Schmitthoff, *op. cit.*, pp. 127-137.

(a) The yearbook, *Unification of Law*, which presents a general survey of the work on the unification of private law with specific reference to conventions and draft conventions.

(b) The quarterly, *Uniform Law Cases*, which contains decisions of national courts on conventions and uniform laws. In particular, leading cases on the following are included: the Brussels Convention of 1924 on Bills of Lading; the Warsaw Convention of 1929 on International Carriage by Air; the Geneva Convention on Negotiable Instruments of 1930 and 1931.

(c) Tables of legal activities on the programmes of certain international organizations, which are prepared by the secretariat of the Institute in connexion with meetings of the organizations concerned with the unification of law, arranged by the Rome Institute. So far three meetings have been held, the first in 1956, the second in 1959, and the last in 1963.¹⁷ A list of inter-governmental and non-governmental organizations which took part in the third meeting is given in annex II.

36. The latest table has been brought up to date to 1 January 1966 by the Institute and may be found in Annex III.

37. It should further be noted that in 1959 the Rome Institute concluded an arrangement with the United Nations on the reciprocal exchange of information and documentation, in order to promote co-operation and co-ordination between the United Nations and the Institute. This arrangement was made pursuant to resolution 678 (XXVI) of 3 July 1958 of the Economic and Social Council.

2. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

38. The origin of the Hague Conference can be traced to the influence of the renowned Italian jurist Pasquale Mancini. He submitted a report¹⁸ to the second session of the Institute of International Law in Geneva in 1874 in which he advocated the unification of the rules of the conflict of laws in the various national jurisdictions. The first Hague Conference on Private International Law was convened by the Government of the Netherlands and held in 1893.¹⁹ The Conference originally held its sessions on an *ad hoc* basis, but subsequent meetings took place with a certain regularity though at long intervals. At its seventh session in 1951, the Conference adopted its present Statute which entered into force on 15 July 1955 as a multilateral international treaty.²⁰

39. According to article 1 of the Statute, it is the objective of the Conference to work for the progressive unification of the rules of private international law. These objectives are thus quite different from those of the Rome Institute, which attempts to unify specified

¹⁷ The record of the IIIrd Meeting may be found in *Unification of Law: Yearbook, 1963* (Rome, Editions Unidroit, 1964).

¹⁸ See "Utilité de rendre obligatoires pour tous les Etats, sous la forme d'un ou de plusieurs traités internationaux, un certain nombre de règles générales du droit international privé, pour assurer la décision uniforme des conflits entre les différentes législations civiles et criminelles" in *Revue de droit international*, (Paris), vol. 7, 1931, p. 329.

¹⁹ The decision to convene this first Conference owed much to the initiative of Tobias Asser, who subsequently served as President of the first four Hague Conferences (1893, 1894, 1900, 1904).

²⁰ United Nations, *Treaty Series*, vol. 220 (1955), No. 2997, p. 121.

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branches of substantive law of different countries. The Statute provides in article 2 that countries which have taken part in one or several sessions of the Conference and accept the Statute shall be members of the Conference. Other States may be admitted as members by decision of the majority of votes cast by the participating members. In addition to the sixteen States which were represented at the adoption of the Statute,²¹ eight have become members of the Hague Conference: Czechoslovakia, Greece, Ireland, Israel, Turkey, the United Arab Republic, the United States of America, and Yugoslavia. Hungary, Liechtenstein and Poland have signed or adhered to Conventions sponsored by the Conference but have not become members. Of the twenty-four member States, only two—Czechoslovakia and Yugoslavia—have centrally planned economies. Twenty States are European, two are Asian, one is African (United Arab Republic), and one is North American (United States of America). None of the Latin American countries participated, perhaps because they have their own arrangements for the unification of conflict of laws rules, which are to be found in the Treaties of Montevideo and the Bustamante Code (see paras. 129-134 below).

40. The method of operation of the Conference is to prepare draft conventions for adoption by member States at the sessions of the Conference. The Conference also promotes the signature and ratification of conventions prepared by it and, where appropriate, the incorporation by States of the terms of these instruments into their national legislation. These activities distinguish the Conference from the Rome Institute and from certain other formulating agencies.

41. While the earlier conventions deal mainly with family law, some of the conventions adopted by the seventh to tenth sessions attempt to unify conflict rules to international trade law.

42. The most successful Hague Convention pertaining to international trade law is the Convention on the Law Applicable to International Sales of Goods of 15 June 1955.²² This Convention is in force with respect to Belgium, Denmark, Finland, France, Italy and Norway as of 1 September 1964 and with respect to Sweden as of 6 September 1964. The main provisions of this Convention have been summed up by an English writer as follows:

"A contract for the sale of goods is regulated by the domestic law of the country designated by the parties. Failing such a designation, the contract is regulated by the domestic law of the country where the seller has his habitual residence at the time when he receives the order. If the order is received by a branch office of the seller the contract is regulated by the domestic law of the country where such branch is located. Nevertheless the contract is regulated by the domestic law of the country where the buyer has his habitual residence if the order has been received in that country by the seller or his agent."²³

43. The conflict regulation in favour of the substantive law of seller's country has also been used in para-

graph 74 of the General Conditions of Delivery of Goods, 1958, of the Council for Mutual Economic Assistance (see paras. 115-120 below), and in the arbitration clauses of the General Conditions of Sales, Nos. 188, 574 and 730 of the United Nations Economic Commission for Europe (see paras. 67-74 below).

44. Mention should also be made of Convention Relating to Civil Procedure signed at The Hague on 1 March 1954,²⁴ which is important for international commerce in that it deals with the enforcement of obligations sought in the national courts of the parties concerned. The States Parties to the Convention are Austria, Belgium, Czechoslovakia, Denmark, the Federal Republic of Germany, Finland, France, Hungary, Italy, Luxembourg, the Netherlands, Norway, Poland, Spain, Sweden, Switzerland and Yugoslavia.

45. Another Convention promoted by the Hague Conference which has come into operation is the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.²⁵ This Convention was concluded on 5 October 1961; it came into operation for France, the United Kingdom of Great Britain and Northern Ireland and Yugoslavia on 24 January 1965, for the Netherlands on 8 October 1965, and for the Federal Republic of Germany on 13 February 1966.

46. Other conventions in the field of international commercial law promoted by the Hague Conference which have not yet entered into force are: the Convention on the Law Applicable for the Transfer of Property in International Sales of Corporeal Movables of 15 April 1958; the Convention on the Jurisdiction of an Agreed Court in International Sales of Corporeal Movables of 15 April 1958; the Convention on the Recognition of the Legal Personality of Companies, Associations and Foreign Foundations of 1 June 1956; the Convention on the Choice of Court of 25 November 1965; and the Convention on the Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters of 26 April 1966.

47. The Conference concluded an Agreement with the Council of Europe under which the latter will not deal with the unification of private international law and will refer to the Hague Conference all proposals on that subject which are made at its meetings. The Council may invite the Conference to elaborate a convention on a specific matter. Both the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, of 5 October 1961, and the draft Convention on the Recognition and Enforcement of Foreign Judgements (Final Act of 26 April 1966) were drafted as a direct result of such requests.

48. All of the proceedings of the Conference and many of the documents submitted by Governments or drafted by the secretariat are published in volumes bearing the title *Actes et documents de la Conférence de La Haye de droit international privé, ... session*.

49. In 1958 the Hague Conference concluded an arrangement with the United Nations similar to that which exists between the Rome Institute and the United Nations, providing for co-operation, co-ordination and exchange of information and documentation. As in the case of the Rome Institute, this arrangement was made pursuant to resolution 678 (XXVI) of 3 July 1958 of the Economic and Social Council.

²¹ Austria, Belgium, Denmark, Federal Republic of Germany, Finland, France, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland.

²² United Nations, *Treaty Series*, vol. 510 (1964), No. 7411, p. 147.

²³ See G. C. Cheshire, "International Contracts for the Sale of Goods," in *Journal of Business Law* (London, 1960), p. 285.

²⁴ United Nations, *Treaty Series*, vol. 286 (1958), No. 4173, p. 265.

²⁵ *Ibid.*, vol. 527 (1965), No. 7625, p. 189.

3. THE LEAGUE OF NATIONS

50. The activities of the League of Nations with respect to the unification of the law of international trade related mainly to negotiable instruments and to international commercial arbitration. Reference is made below to several of the more important instruments which were formulated under the auspices of the League.

- (a) *The Geneva Conventions on the unification of the law relating to bills of exchange (1930) and to cheques (1931)*

51. On 7 June 1930, three conventions on the unification of the law relating to bills of exchange²⁶ were signed at Geneva, and on 19 March 1931 three further convention on the unification of the law relating to cheques²⁷ were signed at Geneva. The most important of these conventions are the Convention providing a Uniform Law for Bills of Exchange and Promissory Notes and the Convention providing a Uniform Law for Cheques. The others deal with conflict of law rules and provisions of national stamp legislation relating to these types of negotiable instruments.

52. The Geneva Conventions have achieved a significant unification of the law of negotiable instruments. The uniform law relating to both types of negotiable instruments has been introduced into the municipal legislation by sixteen countries, viz., Brazil, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Japan, Monaco, the Netherlands, Norway, Poland, Portugal, Sweden and Switzerland. In addition, Austria, Belgium and the USSR have accepted the Uniform Law on Bills of Exchange only, and Nicaragua has introduced the Uniform Law on Cheques only.

53. The countries belonging to the common law system did not take part in this unification of the law of negotiable instruments, nor have any of these countries given effect to these uniform laws in its territory.

- (b) *The Geneva Protocol on Arbitration Clauses of 1923²⁸ and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927²⁹*

54. The Protocol deals with the recognition of arbitration agreements; each of the Contracting States undertakes to recognize the validity of such agreements between parties subject to the jurisdiction of different Contracting States. The Convention provides that an arbitral award made pursuant to an arbitration agreement covered by the Protocol shall be recognized as binding and shall be enforceable in the territories of the Contracting States, subject to certain conditions, among them the condition of reciprocity.

55. The Protocol has been ratified by fifty-three countries and the Convention by forty-four countries. These two arrangements have been the foundation for the acceptance of international commercial arbitration as the most practical method of settling disputes arising from transactions of international trade.

4. THE UNITED NATIONS

56. The United Nations has been engaged in activities in this field on a world-wide as well as on a re-

gional scale. The most important world-wide activities have been on the subject of international commercial arbitration, industrial property legislation and transnational trade of land-locked countries. Activities on a regional scale have been performed by the United Nations regional economic commissions, notably in the areas of standardization of trade documents, international contracts and commercial arbitration.

- (a) *The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958³⁰*

57. The growing intensity of modern international trade and the concomitant need to develop facilities for arbitration caused the international business community to consider the Geneva arrangements as inadequate. In response to this situation, the Economic and Social Council, on the initiative of the International Chamber of Commerce, decided to convene a diplomatic conference in New York to conclude a new Convention.

58. The Convention there adopted on 10 June 1958 is designed to supersede the Geneva arrangements and, at the same time, to make more effective the international recognition of arbitration agreements and the recognition and enforcement of foreign arbitral awards.³¹

59. The United Nations Convention represents a definite advance over the Geneva arrangements in that it facilitates to a considerable degree the enforcement of foreign arbitral awards. First, it abolishes, in principle, the requirement of reciprocity, although a State may declare that it will apply the Convention to awards made only in the territory of other Contracting States (article I (3)). Secondly, it abolishes the requirement of double *exequatur* which in many countries is a serious obstacle to the enforcement of foreign arbitral awards (article V (1) (e)). Thirdly, it is no longer necessary for the recognition of an arbitration agreement or for the enforcement of an arbitral award that the parties should be subject to the jurisdiction of different contracting States (articles I (1) and II (1)).

60. The United Nations Convention came into force on 7 June 1959. Thirty-one States have become parties to it (see annex I).

(b) *Industrial property legislation*

61. Since 1961 the United Nations General Assembly has had before it the problem of the role of industrial property legislation in facilitating the transfer of patented and unpatented technological and managerial know-how to developing countries. At its sixteenth session, the General Assembly adopted resolution 1713 (XVI) on the role of patents in the transfer of technology to under-developed countries, in which it requested the Secretary-General to study the issues involved, including specifically, the effects of patents on the economy of developing countries; patent legislation in selected developed and developing countries; and the characteristics of the patent legislation of developing countries in the light of economic development objectives.

³⁰ United Nations, *Treaty Series*, vol. 330 (1959), No. 4739, p. 3.

²⁶ League of Nations, *Treaty Series*, vol. CXLIII (1933-1934), No. 3313, p. 257; No. 3314, p. 317; No. 3315, p. 337.

²⁷ *Ibid.*, vol. CXLIII (1933-1934), No. 3301, p. 7; No. 3316, p. 355; No. 3317, p. 407.

²⁸ *Ibid.*, vol. XXVII (1924), No. 678, p. 157.

²⁹ *Ibid.*, vol. XCII (1929-1930), No. 2096, p. 301.

³¹ For analysis and comments on the Convention, see e.g. Paolo Contini, "International Commercial Arbitration—The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards" in *American Journal of Comparative Law* (Ann Arbor), vol. 8, 1959, p. 283; Samuel I. Pizar, "The United Nations Convention on Foreign Arbitral Awards" in *Journal of Business Law* (London, 1959), p. 219.

62. The study, which was prepared in the Fiscal and Financial Branch of the Department of Economic and Social Affairs in response to that resolution,³² provided a comprehensive review of the major characteristics of national patent laws and the international patent system as well as a thorough analysis of the economic implications of the introduction of patent legislation in developing countries. The study emphasized, *inter alia*, that properly adapted patent legislation was essential if the patent system was to be beneficial to economic development and advancement of industry in developing countries.

63. The United Nations Conference on Trade and Development in recommendation A.IV.26 of 15 June 1964 specifically recommended that "competent international bodies, including United Nations bodies and the Bureau of the International Union for the Protection of Industrial Property, should explore possibilities for adaptation of legislation concerning the transfer of industrial technology to developing countries. . .". A similar position was taken by the Economic and Social Council in resolution 1013 (XXXVII), which requested "the Secretary-General to explore possibilities for adaptation of legislation concerning the transfer of industrial technology to developing countries, generally and in co-operation with the competent international bodies, including United Nations bodies and the Bureau of the International Union for the Protection of Industrial Property".

64. On this basis representatives of the Secretary-General co-operate with the United International Bureaux for the Protection of Intellectual Property (BIRPI) in the preparation of the Bureaux' Draft Model Laws in this field (see paras. 108-111 below). The first of these, the Model Law for Developing Countries on Inventions,³³ incorporates most of the Secretary-General's substantive recommendations regarding the major problem areas of compulsory licensing and working of patents, government review of international licence agreements, and the administration of industrial property legislation.³⁴

(c) *United Nations regional economic commissions*

65. The functions of the United Nations regional economic commissions, which have been established in accordance with resolutions of the Economic and Social Council, are to assist in raising the level of economic activity in their respective regions and to strengthen economic relations on both an intraregional and an interregional level.

(i) *Economic Commission for Europe (ECE)*

66. The activities of the Economic Commission for Europe (ECE) in the development of the law of international trade have been primarily in the field of international contracts and commercial arbitration. These activities have been initiated in most cases by the Committee for the Development of Trade. In addition to its activities with respect to international contracts and commercial arbitration, ECE through its Inland Transport Committee, has engaged in efforts toward the simplification and standardization of export documents and has concerned itself with the problems of insurance and re-insurance, of trade in machinery and equipment,

the improvement of payments arrangements and other items. It also sponsors periodic consultations of experts in intra-European, and especially East-West, trade.

a. *The ECE General Conditions of Sale and Standard Forms of Contract*

67. Since the end of the nineteenth century, trade associations have come into existence in many European trade centres and have concerned themselves especially with the international commodity trade. This development has been particularly prominent in the United Kingdom, where influential organizations operate, such as the Timber Trade Federation of the United Kingdom, the London Corn Trade Association, the Incorporated Oil Seed Association (London), and many others. Most of these trade associations have devised their own contract forms. There is "a surprisingly large number of these forms of contract on the market that not only differ from trade to trade but also from country to country. The would-be user is very often confronted with an embarrassingly large choice of forms of contract which he could use. He is also confronted with the fact that nearly all these instruments refer to one legal system alone, and have been drawn solely with that system in view, namely, that of the country of the trade association or organisation that drafted them."³⁵ In an effort to meet these conditions, ECE has formulated and disseminated the General Conditions of Sale and Standard Forms of Contract. It is to be hoped that in the course of time these will replace the numerous contract forms issued by trade associations. A list of the forms issued by ECE is found in annex I. Among the most important of these are: General Conditions for the Supply of Plant and Machinery for Export (Form No. 188) (March 1953); General Conditions for the Supply and Erection of Plant and Machinery for Import and Export (Form No. 188A) (March 1957); General Conditions for the Supply of Plant and Machinery for Export (Form No. 574) (December 1955); General Conditions for the Supply and Erection of Plant and Machinery for Import and Export (Form 574A) (March 1957); General Conditions of Sale for the Import and Export of Durable Consumer Goods and of Other Engineering Stock Articles (Form No. 730) (March 1961).

68. It is to be noted that Forms 574 and 574A are alternatives to Forms 188 and 188A. The latter are used when both parties reside in countries of free enterprise economy and the former are used when one party or both parties are foreign trade organizations having centrally planned economies.³⁶ Form 730, on the other hand, is adapted for use in all transactions irrespective of the economic order of the country in which the contracting parties reside.

69. The ECE General Conditions of Sale have been drafted by working parties composed of businessmen. Representatives from almost every European country, including countries having free-enterprise economies as well as those having centrally planned economies, have served on the working parties since 1951. Many national trade associations have lent their support and assistance in this work. Thus when the forms of contract for the sale of cereals by sea were prepared, more

³² *The Role of Patents in the Transfer of Technology to Developing Countries* (United Nations publication, Sales No.: 65.II.B.1).

³³ BIRPI publication 801 (E), Geneva, 1965.

³⁴ See note by the Secretary-General of the United Nations (E/4078, annex A).

³⁵ See Peter Benjamin, "The ECE General Conditions of Sale and Standard Forms of Contract" in *Journal of Business Law* (London, 1961), p. 119.

³⁶ On the difference between these two sets, see "East-West Trade and UN ECE Conditions" in *Journal of Business Law* (London, 1965), p. 100.

than eighty national forms of contract were sent in, of which some fifty were the forms of contract drawn up by the London Corn Trade Association.⁸⁷

70. The use of the General Conditions of Sale and Standard Forms of Contract sponsored by ECE is optional. This is a characteristic which they share with the formulations of the International Chamber of Commerce (see paras. 147-166 below).

71. Two features of this work of ECE should be noted. First, the General Conditions represent a projection on the international level of work begun by the trade associations on the national level. Secondly, some of the trade association contracts undoubtedly favoured the sellers or buyers, according to the balance of interests in the trade associations. This factor was removed when the forms were studied by a working party composed of suppliers and consumers and eventually approved by ECE.

72. From the viewpoint of the progressive development of the law of international trade, the most important feature of the General Conditions is that, as one writer has indicated they "render it somewhat redundant to refer to a national legal system".⁸⁸ In brief, the General Conditions attempt to provide such a complete regulation of the rights and duties of the contracting parties that a need to refer to a national legal system will arise only in exceptional circumstances. While it may not be possible to make a contract completely self-regulatory, it is noteworthy that at least an attempt is made by means of the ECE forms to achieve that aim.

73. It is too soon to assess whether the standard conditions sponsored by ECE will be as widely accepted by the international commercial community as are the formulations published by the International Chamber of Commerce although so far the result appears to be encouraging. Over a million copies have been sold of the various ECE Conditions for the Supply of Plant and Machinery. National trade associations have utilized them for their own standard contract forms, and they have been translated into various unofficial languages, including German, Italian, Portuguese, Spanish, Turkish and various Scandinavian languages. (The official languages are English and French and, for some forms, Russian.)

74. Detailed explanations as to the practical application of the General Conditions of Sale and Standard Forms will be published by the ECE in near future on the "Preface to the General Conditions of Sale and Standard Forms of Contract".

b. *European Convention on International Commercial Arbitration*

75. The Commission was responsible for the preparation of this Convention which was signed on 21 April 1961 and came into force on 7 January 1964.⁸⁹ Of the eighteen signatory States, eleven have ratified this Convention, namely Austria, Bulgaria, the Byelorussian SSR, Czechoslovakia, the Federal Republic of Germany, Hungary, Poland, Romania, the Ukrainian SSR, the USSR and Yugoslavia. Of these eleven countries, nine are countries of centrally planned, and two of free enterprise, economy. In addition, Cuba and Upper Volta have adhered to the Convention. The seven outstanding ratifications are those of countries

of free enterprise economy. In addition to the eighteen signatory States, the following States have nominated "Appointing Authorities" for the purposes of the Arbitration Rules of January 1966 made under the Convention: Ireland, the Netherlands, Sweden, Switzerland and the United Kingdom.

76. The Convention pursues purposes different from those of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (see paras. 57-60 above). The European Convention on International Commercial Arbitration has a twofold purpose: first, to overcome the problem of appointing arbitrators in cases where the parties to an arbitration agreement fail to agree, a particularly difficult problem if the parties reside in countries having a different economic structure, and secondly, to facilitate recourse to commercial arbitration, irrespective of the economic structure of the countries in which the parties reside.⁴⁰

77. The Convention, like the General Conditions of Sale sponsored by ECE, thus aims, *inter alia*, at reducing some of the obstacles to the flow of trade between countries of free enterprise economy and countries of centrally planned economy.

78. A valuable innovation created by the Convention is the establishment, provided for in article IV, of a Special Committee to which the claimant may apply if the respondent does not co-operate in the appointment of the arbitrator. The Special Committee consists of three members elected for four years. One member is elected by the Chambers of Commerce of countries in which National Committees of the International Chamber of Commerce exist, and one by the Chambers of Commerce of countries in which no such National Committees exist. The third member, who acts as chairman, is elected for two years by the Chambers of Commerce of the first group of countries and for the next two years by the Chambers of Commerce of the second group. This is the only arbitral institution common to the countries of free enterprise and centrally planned economy.

79. The Convention is supplemented by the ECE Arbitration Rules of January 1966.⁴¹

(ii) *Economic Commission for Asia and the Far East (ECAFE)*

80. The Economic Commission for Asia and the Far East (ECAFE) has been active in the field of international commercial arbitration for several years. A study on arbitral legislation and facilities in certain countries of the ECAFE region was, for example, completed in 1958 by the ECAFE secretariat and the Office of Legal Affairs of the United Nations.

81. In 1962 a Centre for Commercial Arbitration was established within the ECAFE secretariat at Bangkok. The Centre, which co-operates with the Office of Legal Affairs and with commercial experts and national correspondents designated by the member countries, promotes the wider use of commercial arbitration and the creation and improvement of arbitral institutions and facilities in the region.

82. Mention should be made of the ECAFE Conference on International Commercial Arbitration which met at Bangkok in January 1966. The Conference

⁸⁷ See Peter Benjamin, *op. cit.*, p. 123.

⁸⁸ *Ibid.*, p. 116.

⁸⁹ United Nations, *Treaty Series*, vol. 484 (1963-1964), No. 7041, p. 349.

⁴⁰ See David A. Godwin Sarre, "European Commercial Arbitration" in *Journal of Business Law* (London, 1961), p. 352.

⁴¹ United Nations publication, Sales No.: 66.II.E/Mim.4.

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⁸⁸ *Ibid.*, p. 116.

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⁴⁰ See David A. Godwin Sarre, "European Commercial Arbitration" in *Journal of Business Law* (London, 1961), p. 352.

⁴¹ United Nations publication, Sales No.: 66.II.E/Mim.4.

recommended the preparation of a set of ECAFE Rules for International Commercial Arbitration to be brought to the attention of chambers of commerce, legal and business associations, universities and other appropriate bodies throughout the ECAFE region. These rules have now been prepared on the basis of standards adopted by the Conference, and will be published shortly.

83. The Conference also considered it advisable that separate lists of arbitrators and appointing authorities (authorities entrusted with the function of appointing arbitrators) be prepared and maintained by the ECAFE Centre in consultation with Governments, national correspondents of the Centre and other appropriate institutions. In another recommendation the Conference dealt with the dissemination of model arbitration clauses. The Conference also agreed on certain standards for conciliation which would be appropriate as a guide to parties who wish to have recourse to conciliation for the settlement of their disputes. The Conference recommended that the standards should be adopted by the ECAFE Centre and disseminated throughout the region, in the same manner as the rules for arbitration. The Conference also proposed that the ECAFE Centre should invite each of the main chambers of commerce of the region, through their respective Governments, to constitute panels of businessmen who would be prepared to sit on conciliation committees whenever so requested by parties.

84. The recommendations of the Conference were approved by ECAFE's Committee on Trade and, thereafter, by ECAFE itself at its twenty-second annual session in New Delhi.

85. The Committee on Trade has received suggestions that ECAFE should initiate projects for the standardization of general conditions of sale for selected commodities and simplification of export documents,⁴² similar to those sponsored by ECE. The Commission has also engaged in studies of the laws and regulations concerning customs administration in the countries of the region with a view to promoting uniform concepts and efficient procedures and has established the ECAFE Code of Recommended Customs Procedures.

(iii) *Economic Commission for Latin America (ECLA)*

86. The activities of the Economic Commission for Latin America (ECLA) in the field of trade have been directly related to long-term efforts toward increased economic integration within the region. In this connexion, the secretariat of ECLA provides advisory services to the member countries of the Latin American Free Trade Association established on 2 June 1961 under the terms of the Montevideo Treaty of 18 February 1960. Studies carried out by the secretariat include research into the simplification and standardization of customs procedures, documentation and nomenclature.

87. The Central American Economic Co-operation Committee of ECLA has engaged in efforts toward wider ratification and implementation of the General Treaty on Central American Economic Integration, concluded on 13 December 1960,⁴³ establishing the Central American Common Market. In this connexion, the Committee has engaged in studying standard customs codes and common tariff regulations.

88. Furthermore, ECLA has produced studies on the legal aspects of the utilization of international rivers and lakes, and on the terms of trade and their influence on the rate of economic development in the region, as well as on the establishment of a common customs code, and has sponsored seminars on co-ordination of customs administration.

89. With respect to maritime transport, research has been carried out by ECLA on the possibilities of standardization of bills of lading and other documentation.

(iv) *Economic Commission for Africa (ECA)*

90. The Economic Commission for Africa (ECA) has as its function to promote action among the African States toward the economic and social development of the region and to strengthen the economic relations of the countries concerned among themselves and in relation to other States. To this end, it undertakes studies of and disseminates information on economic problems and development in the area and assists in the formulation of policies to intensify economic development, *inter alia*, with respect to trade.

91. The secretariat of ECA has compiled surveys of intra-African trade and of its potentialities and of respective measures to stimulate trade. Studies have also been carried out on regional trade arrangements, particularly the trade grouping of Western Europe, and their impact on trade in Africa and on the trade of African countries with States having centrally planned economies. The ECA also publishes a survey of current trends in African trade and development in the *Economic Bulletin for Africa*. Included in ECA's current programme of work are studies of national legislation dealing with trade and such related fields as insurance law and investment codes whose purpose is to enable conclusions to be drawn regarding measures for the harmonization of such legislation, especially on a sub-regional basis. In connexion with the foregoing project, ECA promotes the adoption of the Brussels Tariff Nomenclature,⁴⁴ among the member countries of ECA.

92. In connexion with its resolution 140 (VII) dealing with the co-ordination of industrial incentives and legislation, ECA reviews legislation and practices with respect to investment incentives and industrial development and has studied the question of harmonization of these matters among the member States. In addition, studies have been initiated on the harmonization of legislation concerning maritime transport and on the constitutional and legal basis of public autonomous institutions and corporations. Arrangements have also been made between ECA and ECE for providing assistance to African States concerning the simplification and standardization of expert documents.

93. In co-operation with GATT, ECA sponsors annual courses in commercial policy for both French and English-speaking Africans. It also provides advisory services and organizes *ad hoc* courses and seminars in customs administration. The establishment, with ECA assistance, of inter-governmental machinery for economic co-operation at the sub-regional level, and the intensive sub-regional studies being carried out by

⁴² See document E/CN.11/721, para. 54.

⁴³ United Nations, *Treaty Series*, vol. 455, (1963), No. 6543, p. 3.

⁴⁴ The Nomenclature for the Classification of Goods in Customs Tariffs was elaborated by the Customs Co-operation Council, which was established as an inter-governmental organization on 15 December 1950, in Brussels. The Brussels Nomenclature has been introduced in seventy-five countries.

ECA, particularly in industry, agriculture and transport, will no doubt serve as a useful adjunct to possible future participation by African countries in efforts toward the development of international trade law.

(d) *United Nations Conference on Trade and Development (UNCTAD)*

94. The United Nations Conference on Trade and Development was established as an organ of the General Assembly in 1964 by General Assembly resolution 1995 (XIX). The membership of the Conference consists of the States which are Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. The resolution provides that the Conference is to be convened every three years and that, when the Conference is not in session, the Trade and Development Board, as the permanent organ of the Conference, will carry out its functions.

95. A number of particular problems in the area of trade have been dealt with by UNCTAD. The Convention on Transit Trade of Land-Locked Countries⁴⁵ was adopted at New York on 8 July 1965 by the Conference of Plenipotentiaries on Transit Trade of Land-Locked Countries, which had been convened by the General Assembly of the United Nations in pursuance of a recommendation by UNCTAD. The Convention includes in the preamble a reaffirmation of the eight principles adopted by the United Nations Conference on Trade and Development. The substantive provisions of the Convention deal with *inter alia* freedom of transit to traffic in transit; means of transport; the facilitation of traffic in transit by mutually acceptable routes, and non-discrimination in regard to traffic in transit, customs duties and special transit dues; free zones or other customs facilities, storage of goods in transit; and settlement of disputes. The Convention, which has not yet entered into force, has been acceded to by Malawi, Mongolia, Niger and Nigeria.

96. The Conference also adopted two resolutions. In the first of these resolutions, the Conference requested the Inter-Governmental Maritime Consultative Organization to facilitate the transit trade of land-locked countries in accordance with the provisions of the Convention on the Facilitation of Maritime Travel and Transport concluded in London in 1965 (see para. 103 below). In its other resolution, the Conference recommended the provision of assistance by United Nations organs in furthering the transit trade of land-locked and transit States.

(e) *Centre for Industrial Development*

97. The functions of the Centre for Industrial Development are, *inter alia*, to promote and co-ordinate activities within the United Nations system of organizations in the field of industrialization and to carry out research and the preparation of studies in the field of industrialization.

98. In this connexion mention should be made of certain projects on the work programme of the Centre which are of relevance here. These include a study of the problems of the harmonization of industrial tax incentives within the framework of regional co-operation and integration, and research into the role of national export organizations in promoting the export of manufactured goods.

99. Research is also being conducted in order to identify industries from the point of view of simultaneous import substitution and export promotion.

⁴⁵ See document TD/B/18.

100. Another relevant project to be undertaken by the Centre in 1967 is the Industrial Legislative Series which is to provide a world-wide review of industrial laws and regulations. The main purpose of publishing the Industrial Legislative Series is to enable developing countries to benefit from the experience acquired by other countries when drafting their industrial laws or amending existing ones. The series is to cover all the different aspects of industrial legislation, such as laws and regulations on patents, standards and specifications, requirements for plant operating licences, industrial sites, factory layout and structure, investment incentives, inspection, import controls, trade marks, taxation, training, forms of organization and registration, use of machinery and equipment, industrial safety and hygiene.

5. THE UNITED NATIONS SPECIALIZED AGENCIES

(a) *International Bank for Reconstruction and Development (IBRD)*

101. In accordance with resolution No. 214, adopted by the Board of Governors on 10 September 1964, the Executive Directors of the IBRD formulated the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The submission of the Convention to member Governments of the Bank was approved by the Executive Directors on 18 March 1965. Although investment disputes are generally settled through judicial, arbitral or other procedures available under the laws of the country in which the investment was made, experience has shown that in many instances international machinery for the settlement of investment disputes is considered preferable by both States and investors. The Convention therefore provides, *inter alia*, for the establishment of an International Centre for Settlement of Investment Disputes which will "provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States" (article 1 (2)). The Centre, while not itself engaging in conciliation or arbitration, will provide facilities for the Conciliation Commission and Arbitral Tribunal which are to be instituted in accordance with the Convention. The organs of the Centre are the Administrative Council, composed of one representative of each contracting State, and the secretariat. The Centre is required to maintain a Panel of Conciliators and a Panel of Arbitrators, from which the parties to a dispute may select the members of the Commission or Tribunal to which the dispute is to be submitted. The jurisdiction of the Centre in disputes is dependent upon the written consent of the parties thereto and extends to "any legal dispute arising directly out of an investment" (article 25 (1)) between a contracting State or a constituent subdivision of a contracting State and a national of another contracting State, either a natural or juridical person. Contracting States may, if they so desire, notify the Centre in advance as to the classes of disputes which they would, or would not, consider submitting to the jurisdiction of the Centre (article 25 (4)). Article 53 provides that arbitral awards under the Convention are binding upon the parties and are not subject to any appeal or any other remedy except those stipulated in the Convention. Those remedies are revision (article 51) and annulment (article 52). Parties may also request that the Tribunal make a supplementary award or may request an interpretation of an award.

102. The Convention is open for signature to the States members of IBRD as well as to any State party

to the Statute of the International Court of Justice which the Administrative Council shall have invited to sign the Convention, and is subject to ratification, acceptance or approval by each signatory State. It will enter into force thirty days after the deposit of the twentieth instrument of ratification, acceptance or approval. Thus far it has been signed by forty-four States and ratified by the Central African Republic, Congo (Brazzaville), Gabon, Ghana, the Ivory Coast, Mauritania, Nigeria, Tunisia, Uganda and the United States of America.

(b) *Inter-Governmental Maritime Consultative Organization (IMCO)*

103. A Conference of Plenipotentiaries, convened in London under the auspices of IMCO, adopted the Convention on the Facilitation of International Maritime Travel and Transport, which was opened for signature on 9 April 1965 (see also para. 96 above). The Convention provides, *inter alia*, for arrangements designed to unify and simplify the formalities required of shipowners by public authorities on the arrival, stay and departure of ships of the crew and passengers and miscellaneous other provisions.

104. In addition, IMCO has carried out studies on a number of topics relevant to transport for trade and has undertaken work on a universal system of tonnage measurement designed to simplify and harmonize existing methods of calculating tonnage measurements of ships.

(c) *The International Civil Aviation Organization (ICAO)*

105. This organization has sponsored numerous conventions on air law including the Protocol (signed at The Hague on 28 September 1955)⁴⁶ to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929. The Protocol, which entered into force on 1 August 1963, and to which thirty-three States are parties, is designed to bring up to date and amend certain portions of the Warsaw Convention of 1929, which in turn had as its main object the unification of the rules of private law concerning the carrier's liability in international air carriage and in respect of documents for such carriage.

106. In addition, ICAO has also sponsored the Convention, supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air, Performed by a Person Other than the Contracting Carrier,⁴⁷ which was signed at Guadalajara, Mexico, 18 September 1961. The Convention, which entered into force on 1 May 1964, provides for the extension of certain of the rules of the Warsaw Convention to cases in which the actual carriage by air is performed by a person who was not a party to the agreement for carriage.

107. Furthermore, within the framework of the Convention on International Civil Aviation, concluded at Chicago in 1944,⁴⁸ ICAO has engaged in a Facilitation Programme designed to simplify and standardize procedures, *inter alia*, with respect to aircraft cargo and baggage entering and departing from international airports.

⁴⁶ United Nations, *Treaty Series*, vol. 478 (1963), No. 6943, p. 371.

⁴⁷ *Ibid.*, vol. 500 (1964), No. 7305, p. 31.

⁴⁸ *Ibid.*, vol. 15 (1948), No. 102, p. 295.

6. UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY (BIRPI)

108. The United International Bureaux for the Protection of Intellectual Property, which were founded in 1893, form the permanent organization controlling seven inter-governmental conventions or agreements. In acceding to these international Conventions and Agreements, the Contracting States have undertaken legal and administrative obligations with a view to securing and developing the protection of intellectual property. There are two main types of intellectual property: industrial property (patents, trademarks, etc.); and copyrights on literary and artistic works. The membership of BIRPI comprises countries of free enterprise and centrally planned economies, and includes countries at various stages of development.

109. The present programme of BIRPI is largely concentrated on the territorial extension of the two principal Unions, i.e., the Paris Union for the Protection of Industrial Property (seventy-four member States) and the Bern Union for the Protection of Literary and Artistic Works (fifty-five member States). In addition, BIRPI is engaged in the preparation of model laws in conformity with the principles of the Conventions.

110. A description of BIRPI's work and the Conventions it administers will be found in annex III.

111. Under a working agreement with the United Nations, concluded in 1964, BIRPI is co-operating with the United Nations and several of its subsidiary bodies under various resolutions in assisting the transfer of technology to developing countries.

B. Regional inter-governmental organizations and groupings

1. THE COUNCIL FOR MUTUAL ECONOMIC ASSISTANCE (CMEA)*

112. The Council for Mutual Economic Assistance (CMEA) was established on 25 January 1949. The present members are Albania, Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Mongolia, Romania and the USSR. In the words of a Polish writer, the purpose of CMEA is "to provide a framework for the systematic exchange of information, economic co-operation, mutual technical and scientific aid, and the exchange of raw materials, food-stuffs, machinery and equipment."⁴⁹ A new charter of CMEA⁵⁰ was adopted in 1959, which in turn was amended in July 1962, by a provision adding an Executive Committee.

113. The preamble of the charter of CMEA provides that the members are "determined to continue the development of comprehensive economic co-operation based on the consistent implementation of the international socialist division of labour in the interest of the building of socialism and communism in their countries..."⁵¹

114. Foreign trade among members of CMEA has from the beginning been regarded as an important

* Also known as the Council for Mutual Economic Aid and Comecon.

⁴⁹ See K. Grzybowski, *The Socialist Commonwealth of Nations, Organisations and Institutions* (New Haven, Yale University Press, 1964), p. 67.

⁵⁰ United Nations, *Treaty Series*, vol. 368 (1960), No. 5245, p. 253.

⁵¹ *Ibid.*, p. 264.

technique of economic integration and co-ordination of national plans. To promote foreign trade in a planned manner members concluded bilateral commercial treaties in which they specified the classes and quantities of goods which had to be exchanged, the mode of payment and, in a protocol, the general conditions for the delivery of the goods. The execution of these commercial treaties was left to the foreign trade corporations of the countries in question, which enter into ordinary export and import contracts. The bilateral commercial treaties between the member countries have been described as "the general framework"⁵² in which the foreign trade corporations of those countries carry on their mutual trade.

115. On the recommendation of the Foreign Trade Commission of the Council, a multilateral arrangement, known as the General Conditions of the Delivery of Goods between Foreign Trade Organizations of Member Countries of the Council of Mutual Economic Assistance of 1958, was concluded.⁵³ The General Conditions took the place of twenty-eight sets of bilateral Conditions for Delivery which were appended as protocols to the bilateral commercial treaties between CMEA members.

116. The General Conditions of Delivery of 1958 have been given the force of law in the municipal jurisdictions of all CMEA members. It has been said that the General Conditions "are compulsory, and an enterprise may, when concluding a contract, depart from them only if the deflection is justified by the special nature of the merchandise or a special element in its delivery".⁵⁴

117. The General Conditions, as is the case for Incoterms 1953, issued by the International Chamber of Commerce (see paras. 161-166 below), provide an interpretation of the customary trade terms. The terms regulated by them are f.o.r., free on lorry, free frontier, f.o.b., c.i.f., c. and f., free air transport, free delivered. The General Conditions exceed Incoterms in scope in that they provide a complete code of export trade law; they regulate the transfer of property in the sold goods, the passing of the risk, the delivery of the goods, the payment of the price through the bank under commercial credit or collection instructions, and the usual arrangements for insurance and transport.

118. The General Conditions provide a clear and practical codification of international trade custom as it relates to members of CMEA.

119. Some other activities of CMEA may briefly be mentioned. In December 1962, a system of multilateral accounting in the trade of member States, permitting free movement of balances from account to account, was introduced, and, on 22 October 1963, the Governments of the member States signed an Agreement on Multilateral Payments and Clearing in Convertible Roubles, of which the statute of the International Bank for Economic Co-operation forms an integral part.⁵⁵

120. The contribution of CMEA to the progressive development of international trade law is best exemplified

by the elaboration and promotion of the General Conditions of Delivery, the practical usefulness of which is restricted to CMEA members. Beyond that, however, the General Conditions have demonstrated that the trading techniques of the countries of centrally planned economy do not differ essentially from those of the countries of free enterprise economy.

2. THE EUROPEAN ECONOMIC COMMUNITY (EEC)

121. The Treaty establishing the European Economic Community signed at Rome on 25 March 1957⁵⁶ is an international treaty to which Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, and the Netherlands are parties. In addition to two European countries (Greece and Turkey), the following nineteen African countries are "associated countries": Burundi, Cameroon, the Central African Republic, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Dahomey, Gabon, the Ivory Coast, Madagascar, Mali, Mauritania, Niger, Nigeria, Rwanda, Senegal, Somalia, Togo and Upper Volta.

122. The Treaty of Rome provides in article 100 that "the Council, acting by means of a unanimous vote on a proposal of the Commission, shall issue directives for the approximation of such legislative and administrative provisions of the member States as have a direct incidence on the establishment or functioning of the Common Market". Article 220 provides that "member States shall, in so far as necessary, engage in negotiations with each other with a view to ensuring for the benefit of their nationals . . . the elimination of double taxation within the Community; the mutual recognition of companies . . . , the maintenance of their legal personality in cases where the registered office is transferred from one country to another, and the possibility for companies subject to the municipal law of different member States to form mergers; and the simplification of the formalities governing the reciprocal recognition and execution of judicial decisions and of arbitral awards".

123. The measures promoted or prepared in pursuance of these provisions fall into two categories: directives issued by the Council of EEC and Draft Conventions among member States (see below, annex I).

124. The directives promoted or prepared by the Council can be arranged under three headings: firstly, those aiming at the unification, in the member States, of technical rules on additives to food-stuffs, on pharmaceutical products, motor vehicles, farm tractors, industrial tools, measuring instruments, electrical household appliances and precious metals. Secondly, the Commission has proposed to the Council a draft directive relating to the harmonization of company law suggesting uniform provisions for the disclosure of information, the validity of acts of directors and the validity of company formation; other drafts relating to company law are in preparation. Thirdly, a draft directive on insurance will be sent by the Commission to the Council in the near future; its aim is to co-ordinate the national rules concerning the financial requirements and administrative control of insurance companies.

125. The following draft conventions, based on article 220 of the Treaty of Rome, are under preparation by member States: on European patents; on recognition of companies and legal persons; on the recognition and

⁵² See Trajan Ionesco and Ion Nestor, "The Limits of Party Autonomy" in Schmitthoff, op. cit., p. 170.

⁵³ See Viktor Knapp, "The Function, Organization and Activities of Foreign Trade Corporations in the European Socialist Countries," in Schmitthoff, op. cit., p. 68.

⁵⁴ Ibid.

⁵⁵ See K. Grzybowski, op. cit., p. 106; see also I. Vajda "Linking East and West", in *The Times* (London), 4 March 1966.

⁵⁶ United Nations, *Treaty Series*, vol. 298 (1958), No. 4300, p. 3.

enforcement of judgements originating in other member countries in civil and commercial cases.

3. THE EUROPEAN FREE TRADE ASSOCIATION (EFTA)

126. The Convention establishing the European Free Trade Association (EFTA) was concluded in Stockholm on 4 January 1960.⁵⁷ Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom are member States of EFTA⁵⁸ which has among its objectives to promote the expansion of economic activity and to contribute to the development and expansion of world trade and the progressive removal of barriers to it. The Council of EFTA, as its governing organ, has the prerogative of issuing decisions binding upon member States (article 32 (4)), as well as non-binding recommendations on matters within its competence. In an effort to harmonize practices in the field of international trade among member States, the Council has issued certain directives which are relevant here, such as: Decision No. 4/1960, relating to Evidence of Origin for Re-Exported Goods and Spare Parts for Engineering Goods; Decision No. 7/1960, Relating to the Origin of Materials Taken into Stock before July 1960; Decision No. 16/1960 on Evidence of Origin for Consignments of Small Value.

127. In addition, EFTA has constituted a Restrictive Practices Working Party on the effects of restrictive business practices on international trade. The Working Party has carried out, in the course of its work, a general survey of national legislation and practice in this field.

128. Studies have also been carried out on national law and administrative regulations with respect to restrictions on the establishment and operation in EFTA countries of business enterprises by nationals of other EFTA countries, in order to determine whether the provisions of article 16, paragraph 1, of the Stockholm Convention relevant to this aspect of international economic co-operation are sufficient.

4. THE LATIN AMERICAN COUNTRIES

129. In the countries of Latin America significant progress has been made in the unification of conflict-of-laws rules. In addition, there have been other activities within the scope of this report, notably in the fields of international commercial arbitration, international sale of tangible personal property and harmonization and unification of international trade law within the framework of regional economic integration.

(a) Unification of conflict rules

130. The treaties of Montevideo of 12 February 1889, which provided for the unification of conflict rules in the field of civil and commercial law, are still in force with respect to Bolivia, Colombia and Peru. The other three signatories, Argentina, Paraguay and Uruguay, have withdrawn from it. A revision of the 1889 Treaties was carried out at the second session of the Second South American Congress on Private International Law (held at Montevideo in March 1940). Of the treaties adopted on 19 March 1940 by the Congress as part of this revision, the following should be mentioned: Treaty on International Commercial Navigation

Law; Treaty on International Procedural Law; Treaty on International Commercial Terrestrial Law; and the Treaty on International Civil Law. These treaties are in force with respect to Argentina, Paraguay and Uruguay. The Sixth International Conference of American States, held at Havana in 1928, adopted the Convention on Private International Law (20 February 1928), to which was annexed the Code of Private International Law. The Conference agreed that the code would be officially named the Bustamante Code after its distinguished drafter. This code has been described as "the most important codification of the rules of the conflict of laws in force today".⁵⁹ The following fifteen countries of South and Central America have accepted the Bustamante Code, though some with reservations: Bolivia, Brazil, Chile, Costa Rica, Cuba, the Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru, El Salvador and Venezuela. The code establishes rules of conflict of laws on a variety of subjects, including the following which relate to international commercial law: merchants, commercial companies, commercial commission, commercial deposit and loans, land transportation, contracts of insurance, contracts and bills of exchange, forgery, robbery, larceny, or loss of public securities and negotiable instruments, ships and aircraft, special contracts of maritime and aerial commerce. At a meeting held in San Salvador in 1965, the Inter-American Council of Jurists of the Organization of American States proposed that the Council of the Organization of American States should convene a conference in 1967 for a revision of the Bustamante Code.

(b) International commercial arbitration

(i) The Inter-American Commercial Arbitration Commission

131. The Inter-American Commercial Arbitration Commission, a non-governmental organization, was established in September 1934, at the request of the Governing Board of the Pan American Union, pursuant to resolution XLI of the Seventh International Conference of American States, for the purpose of creating an inter-American system of commercial arbitration. The purposes of the Commission, which has its headquarters in New York, are: (first, the establishment of arbitration facilities in each American country, for which purpose the Commission has appointed national committees in a number of Latin-American countries, responsible for organizing panels of arbitrators and for administering the standard rules of the Commission); secondly, the modification of arbitration laws in order to facilitate the conduct of arbitrations and ensure the enforcement of arbitration agreements and awards; thirdly, the familiarization of businessmen in the American countries with arbitration procedure and its advantages to exporters and importers in inter-American trade; and fourthly, the arbitration or adjustment of differences or controversies, arising in the course of inter-American trade.

(ii) Inter-American draft uniform law on commercial arbitration

132. The Inter-American Council of Jurists, at its Third Meeting, held in Mexico City in 1956, approved an Inter-American draft Uniform Law on Commercial Arbitration (resolution VIII), which was based on

⁵⁷ *Ibid.*, vol. 370 (1960), No. 5266, p. 3.

⁵⁸ Finland has concluded an Agreement of Association with EFTA (27 March 1961). This Agreement was extended to Liechtenstein by means of a Protocol concluded between the Member States of EFTA and Finland on the one hand and Liechtenstein on the other (27 March 1961). *Ibid.*, vol. 420 (1962), No. 6043, p. 109.

⁵⁹ See G. A. L. Droz, "L'harmonisation des règles de conflits de lois et de juridictions dans les groupes régionaux d'Etats," in *Rapports généraux au VI^e Congrès international de droit comparé* (Hamburg, 30 July-4 August 1962), p. 399.

the studies undertaken by the Inter-American Juridical Committee.⁶⁰ In that resolution, the Inter-American Council of Jurists recommended that the American States should, to the extent practicable, adopt in their legislation, in accordance with their constitutional procedures, the said draft uniform law in such form as they considered desirable within their several jurisdictions.⁶¹

(c) *International sale of tangible personal property*

133. At its Fifth Meeting, the Inter-American Council of Jurists, after examining a draft convention on a uniform law on international sale of tangible personal property prepared by the Juridical Committee,⁶² instructed the Committee to revise its draft and to direct its efforts toward drafting a uniform law that would consider problems of international trade in the broadest sense possible. It should take into consideration the statements and proposals made at the Fifth Meeting of the Inter-American Council of Jurists, and the conventions adopted at the Diplomatic Conference on the Unification of Law Governing the International Sale of Goods held at The Hague in April 1964 (see para. 30 above). This topic is on the agenda of the meeting of the Inter-American Juridical Committee, which will start on 10 July 1967.

(d) *Other activities*

134. Other activities in the field of harmonization and unification of international trade law have been carried out under the auspices of the Inter-American Institute of International Legal Studies, a non-governmental organization located in Washington. These include two seminars held in 1964 and 1965 for the purpose of furthering research and studies on legal aspects of economic integration, such as commercial law, transportation, commercial companies and negotiable instruments, insurance, patents and trademarks.

5. THE COUNCIL OF EUROPE

135. The Council of Europe was established in 1949 by the Statute of the Council of Europe.⁶³ At present the following eighteen countries are members of the Council: Austria, Belgium, Cyprus, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Sweden, Switzerland, Turkey and the United Kingdom.

136. The Council of Europe has promoted the following conventions in the field of the law of international trade:

Conventions relating to patents. European Convention relating to the Formalities Required for Patent Applications,⁶⁴ which came into force on 1 June 1955; European Convention on the International Classification of Patents for Invention,⁶⁵ which came into force on 1 August 1955; Convention on the Unification of Certain Points of Substantive Law on Patents for Invention, which is not yet in force.

⁶⁰ *Uniform Law on International Commercial Arbitration, Second draft*, document CIJ-20-A. Pan American Union, Washington, D.C., 1955.

⁶¹ *Final Act of the Third Meeting of the Inter-American Council of Jurists*, document CIJ-29. Pan American Union, Washington, D.C., 1956.

⁶² *Draft Convention on a Uniform Law on the International Sale of Tangible Personal Property*, document CIJ-46. Pan American Union, Washington, D.C., 1960.

⁶³ United Nations, *Treaty Series*, vol. 87 (1951), No. 1168, p. 103.

⁶⁴ *Ibid.*, vol. 218 (1955), No. 2952, p. 27.

⁶⁵ *Ibid.*, vol. 218 (1955), No. 2953, p. 51.

Conventions relating to arbitration. Agreement of 17 December 1962⁶⁶ relating to the Application of the European Convention on International Commercial Arbitration, which had come into force on 7 January 1964; European Convention of 20 January 1962 providing a Uniform Law on Arbitration, which is not yet in force.

Convention relating to hotelkeepers. European Convention on the Liability of Hotelkeepers concerning the Property of their Guests, which is not yet in force.

Convention relating to companies. European Convention of 20 January 1966 on Establishment of Companies, which is not yet in force.

137. In 1965 the European Committee on Legal Co-operation established under the auspices of the Council of Europe, approved the text of a draft Convention on Foreign Money Liabilities which will be opened for signature by the member States in the near future.

138. Studies are also being carried out on questions concerning companies with limited liability, and the Committee will shortly begin work on study of the sale of goods (corporeal movables).

139. The Committee is at present examining other matters which may lead to the conclusion of the following instruments: a convention on the place of payment of foreign money liabilities; a draft European convention on information on foreign law, which will provide for the establishment of a body to supply information about the law in force in the territories of the Contracting Parties in civil and commercial matters; a convention on lost or stolen bearer securities; and a convention on the recognition and execution in one Contracting State of arbitral awards made in another Contracting State.

6. THE BENELUX COUNTRIES

140. The three Benelux countries—Belgium, the Netherlands and Luxembourg—have constituted the Benelux Commission for the Unification of Private Law.

141. The work of unification carried out by the Commission has led to three measures. On 11 May 1951, the three countries signed a Treaty on a Uniform Law on Private International Law. The object of the Uniform Law is to establish complete unity of conflict rules in the three countries. Only Luxembourg has ratified the treaty. Secondly, the Commission has prepared a draft treaty on jurisdiction, bankruptcy, the execution of judgements, arbitral awards and official documents. Thirdly, a Benelux Trade-Mark Convention was concluded on 19 March 1962 but has not yet entered into force.

7. THE NORDIC COUNCIL

142. The Nordic Council was established in 1952 by the Governments of Denmark, Norway, Iceland and Sweden. Finland adhered to the Statute of the Council in 1955.

143. The countries of the Nordic Council adopted uniform laws relating to bills of exchange and the sale of goods. Further, a Uniform Contracts Act, a Mercantile Agents Act and an Act on Conditional Sales were adopted. The Conditional Sales Act was enacted in Denmark, Norway and Sweden. Essentially

⁶⁶ *Ibid.*, vol. 523 (1965), No. 7555, p. 93.

uniform Acts on copyright, including copyright in photographs, were enacted in Denmark, Finland, Norway and Sweden in 1960 and 1961. Denmark, Sweden and Norway enacted uniform legislation on trademarks between 1959 to 1961. Uniform legislative measures are being considered or are in preparation on company law, bankruptcy, unfair competition, patents, trade names, enforcement of judgements and other topics.

144. The Scandinavian countries have further concluded a number of international conventions for the settlement of problems of inter-Scandinavian conflicts of laws. In addition, those countries have concluded a Convention regarding the Recognition and Enforcement of Judgements (1932)⁶⁷ and a Convention regarding Bankruptcy (1933).⁶⁸

8. THE ORGANIZATION OF AFRICAN UNITY (OAU)

145. Since its establishment on 25 May 1963 the Organization of African Unity (OAU) has devoted attention to the problems of trade and transport among its member States. Preliminary studies, such as that made by the secretariat of the OAU of the possible establishment of an African Free-Trade Area, have formed the basis of the work of various expert groups dealing with economic co-operation and integration. More recently the Transport and Communications Commission of the OAU has given consideration to possible methods of the harmonization and co-ordination of national and regional systems of land, water and air transport.

9. THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

146. The Committee, established at New Delhi in 1956 as an inter-governmental organization composed of legal experts acting in an advisory capacity, engages, *inter alia*, in studies of problems referred to it by member countries. It has made recommendations concerning the elaboration of proposed model rules on the recognition and enforcement of foreign judgements in civil cases (Baghdad, 1965) and on immunity of States in respect of commercial transactions of a private character (Cairo, 1958). It has furthermore carried out studies on double taxation and on laws relating to international sales and purchases.

C. Non-governmental organizations

1. THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

147. The International Chamber of Commerce (ICC) was founded in 1919. Its origins can be traced back to a meeting of the International Congress of Chambers of Commerce and Commercial and Industrial Associations in 1905, which was followed by further periodic meetings. In 1919 it was resolved that, instead of periodic meetings, a permanent organization should be created and the ICC was established at the Congress of Paris in July 1920. It has Category A consultative status with the Economic and Social Council.

148. The ICC constitutes a federation of business organizations and businessmen. It is a non-governmental body, neither supervised nor subsidized by Governments.

149. The ICC has national committees in more than forty countries; with the exception of Yugoslavia, these

are all countries having a free enterprise economy. In other countries the ICC is represented by organizations or associate members without national Committees. The ICC is represented in many regions of the world. Of the countries in which it is represented, twenty-one are in Europe, nineteen in Asia, nine in Africa, sixteen in America and two in Oceania.

150. The ICC's activities extend to two fields. First, its aim is to act as spokesman for the business community in the international field and to present the business point of view to Governments and to world public opinion. Secondly, it attempts to ease the mechanism of world trade by removing the various technical obstacles which hamper the free flow of goods and services. Its programme is divided into four main parts: economic and financial policy; production, distribution and advertising; transport and communications; law and commercial practice.

151. The ICC's organization is based on its national committees. Every national committee has a secretariat and working parties. In addition, the ICC has a congress which meets every second year, a council and an international secretariat with its headquarters in Paris.

152. The main aim of the ICC in the development of international trade law is to ascertain trade customs and to formulate them in a generally acceptable form. This is done through study groups of businessmen assisted by the international secretariat, and through the sending of detailed questionnaires to the national committees, which reply after consulting the national working parties. The result of this research is then published and, where required, the publications are revised from time to time. The form of publication reflects the certainty of the trade custom with which it deals. In some instances the customs of international trade can be stated with a high degree of certainty, e.g., in the case of Incoterms 1953 (see paras. 161-163 below) and the Uniform Customs and Practice for Documentary Credits. In other cases, only general guidance can be given, e.g., in the case of Commercial Agency. In a third type of case, commercial custom is vague so that only a tentative statement of facts can be offered, e.g., in the Problem of Clean Bills of Lading.

153. In addition, the ICC has played an active part in the preparation of a number of multilateral instruments in the field of the law of international trade, such as the Convention of 1 July 1964 relating to a Uniform Law on the International Sale of Goods (Corporeal Movables).

154. A catalogue of ICC's main publications is found in annex I.

155. The major contributions of the ICC to the development of commercial law are the Court of Arbitration and its rules of procedure, the Incoterms and the Uniform Customs and Practice for Documentary Credits.

(a) The Court of Arbitration

156. The Court of Arbitration is an institutional arbitration tribunal having a permanent secretariat and utilizing the ICC national committees, however, the arbitrators are appointed *ad hoc* in every arbitrable dispute. There is no panel of arbitrators, but according to article 7 (2) of the Rules of Conciliation and Arbitration of 1 June 1955,⁶⁹ arbitrators suggested by the

⁶⁷ League of Nations, *Treaty Series*, vol. CXXXIX (1933-1934), No. 3209, p. 165.

⁶⁸ *Ibid.*, vol. CLV (1934-1935), No. 3574, p. 115.

⁶⁹ International Chamber of Commerce, *Rules of Conciliation and Arbitration* (Paris, 1955).

parties must be confirmed by the Court of Arbitration. If the parties fail to appoint one or several arbitrators and that task falls upon the Court, the Court will choose the national committee or committees from which it shall request nominations. Sole arbitrators and umpires must be nationals of countries other than those of the parties (article 7 (3)). Unless the parties agree in advance on the place of arbitration, the Court of Arbitration determines the venue of the arbitration.

157. Conciliation procedure is optional and is carried out by the Administrative Commission for Conciliation established at the ICC (articles 1-5).

158. In major international transactions, arbitration before the Court of Arbitration of the International Chamber of Commerce is becoming increasingly popular. It is used not only in disputes between private enterprises but also between private enterprises and States which have submitted to its procedure. It is also sometimes used in disputes between trading concerns of free enterprise and centrally planned economies.

159. In February 1963, the ICC published an analysis of 300 cases decided by the Court.⁷⁰ Of these, about 4 per cent concerned disputes between States and individuals. The following is the breakdown according to parties:

Twenty-two European countries: 253 plaintiffs and 246 defendants.

The American continent: 26 plaintiffs and 33 defendants.

Asia: 18 plaintiffs and 13 defendants.

Africa: 15 plaintiffs and 12 defendants.

Australia: 2 plaintiffs and 2 defendants.⁷¹

160. While the sums involved in the disputes submitted to the Court varied as widely as the subjects of the disputes, the average sum in dispute in the 300 cases under review was approximately \$US 150,000, the total amount involved in the 300 cases thus amounting to almost \$US 40 million.

(b) Incoterms 1953

161. Incoterms 1953 is a set of international rules for the interpretation of nine frequently used trade terms. The terms regulated by the formulation are: *ex works*, *f.o.r.* (free on rail, free on truck), *f.a.s.* (free alongside), *f.o.b.* (free on board), *c.* and *f.* (cost and freight), *c.i.f.* (cost, insurance, freight), freight and carriage paid to, *ex ship*, and *ex quay*. The obligations of the seller and the buyer are defined in Incoterms as clearly and precisely as possible.

162. Incoterms are based upon the greatest common measure of practice current in international trade and ascertained by the ICC as the result of detailed studies by the various national committees. The ICC refused to incorporate in these terms desirable improvements on current practice. "In the opinion of the Chamber's Committee, there are two objections to this policy: (i) what practical merchants have evolved over the years as convenient is always likely to be better than theoretical improvements, and (ii) the prime consideration is to get one set of international rules agreed and widely adopted. If that could be achieved it would be a great step forward, and on the basis of it thereafter improvements may gradually be accepted."⁷²

⁷⁰ International Chamber of Commerce, *Guide to ICC Arbitration* (Paris, 1963), p. 11.

⁷¹ *Ibid.*, pp. 9-10.

⁷² International Chamber of Commerce, *Incoterms 1953* (Paris, 1953/1954), p. 8.

163. The practical utilization of Incoterms is widespread. It was reported in July 1963⁷³ that more than 100,000 copies of the English and French original had been issued: in addition, translations exist in fifteen languages. Incoterms are widely used as standard terms of business by trade associations. Instances of that use occur, for example, in the German *Mühlenbau- und-Industrie G.m.b.H.* or the French *Syndicat général de l'industrie de jute*. The United Nations Economic Commission for Europe embodied a reference to Incoterms, with regard to the passing of the risk in the General Conditions for the Supply of Plants and Machinery for Export, Forms Nos. 188 and 188A (1953), but substituted its own regulation for such reference in later formulations. Some foreign trade corporations of countries with centrally planned economies use Incoterms in their transactions with enterprises of countries with free enterprise economies. This is done, for example, by the Polish corporations Varimax and Cetebe and by the Czechoslovak corporations Controtex, Ligna, Prago-Export. Sometimes even bilateral agreements between countries of centrally-planned economy which are not both members of CMEA provide for the application of Incoterms, e.g. the agreements between East Germany, on the one hand, and North Korea and North Viet-Nam respectively, on the other.

(c) Uniform customs and practice for documentary credits

164. The 1962 Revision of these rules is considered to be a successful example of the unification of modern practices in international trade. Prepared by the Commission on Banking Techniques and Practice of the ICC, the Revision first sets out general provisions and definitions relating to bankers' commercial credits, then deals with the form and notification of credits, the documents to be presented to the correspondent bank, various miscellaneous provisions, and finally the transfer of credits.

165. While the earlier Revision of 1951 had already been widely accepted and used for the opening and the execution of bankers' commercial credits, since the Revision of 1962, which came into operation on 1 July 1963, the British and Commonwealth banks as well have adhered to the Uniform Customs. Today the Uniform Customs are accepted in 173 countries and territories⁷⁴ adhering to different economic systems. Since the commercial credit is the most important and most frequently employed mechanism for the payment of the purchase price in export transactions,⁷⁵ the importance of this unifying formulation of the ICC is significant.

166. It should be kept in mind that the Uniform Customs are considered to be implicitly embodied into contractual relations and there is rarely an express reference to them. Although formerly the parties were required to express adoption of the Incoterms, a tendency has become apparent to consider that the Incoterms are relevant also to commercial transactions, even in the absence of explicit reference, unless the parties have expressed a contrary intention.

⁷³ By Gunnar Lagergren in the Introduction to Frédéric Eisemann's *Die Incoterms in Handel und Verkehr* (Vienna, GOF-Verlag, 1963), p. ix.

⁷⁴ For listings of the countries and territories concerned, see ICC document 470/INT.79 (19 April 1966).

⁷⁵ See Clive M. Schmitthoff, *The Export Trade*, 4th ed. (London, Stevens and Sons, 1962), pp. 211 ff.

2. THE INTERNATIONAL MARITIME COMMITTEE (IMC)

167. The International Maritime Committee (IMC) was founded in 1896 and held its first congress in 1897. In the words of one writer, "today the [IMC] is the only international organization dedicated exclusively to the unification of private maritime law on a global scale... Its main object is to further by conferences and by publications and divers works the unification of maritime law".⁷⁶

168. The IMC is a non-governmental organization on which are represented predominantly commercial interests engaged in maritime transport, such as ship-owners, cargo owners, forwarding agents, bankers and insurers; lawyers specializing in shipping law are likewise represented. The membership of the IMC consists of individuals and national organizations interested in shipping. Today twenty-seven of these national associations adhere to it.⁷⁷ The twenty-sixth conference of the IMC, which was held in Stockholm in June 1963, was attended by delegations from twenty-one countries: Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, India, Ireland, Italy, Japan, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the United Kingdom, the United States of America and Yugoslavia.

169. The IMC has prepared thirteen conventions on uniform laws, most of which have been ratified by a considerable number of countries.

170. A list of the Conventions is appended in annex I.

171. The most successful convention promoted by the IMC is the International Convention for the Unification of Certain Rules Relating to Bills of Lading, signed at Brussels on 25 August 1924.⁷⁸ The Brussels Convention has been ratified by twenty-eight countries (see annex I). In 1963, at the twenty-sixth meeting of the IMC in Stockholm, certain amendments to The Hague Rules were adopted under the title of the Visby Rules, which were to be submitted to governmental consideration at a Diplomatic Conference at Brussels. So far, no diplomatic conference has been convened for that purpose, but the Governments of the Scandinavian countries have requested the Belgian Government to call such a Conference as soon as possible.

3. THE INTERNATIONAL ASSOCIATION OF LEGAL SCIENCE

172. The Association is a non-governmental organization established under the auspices of UNESCO and having its seat in Paris. The main objects of the Association are, according to article 3 of its statutes, to "foster the development of legal science throughout the world through the study of foreign laws and the use of the comparative method. It has the ultimate object to aid the mutual knowledge and understanding of nations".

173. The membership of the Association is composed of national committees and associated members. The

⁷⁶ See A. N. Yiannopoulos, "The Unification of Private Maritime Law by International Conventions," in *Law and Contemporary Problems* (Durham, North Carolina, 1965), vol. 30, pp. 370, 372-3 (foot-notes omitted).

⁷⁷ See P. Chauveau, "L'unification du droit maritime et le C.M.I.," in *Revue trimestrielle de droit commercial* (Paris), vol. 16, 1963, p. 137.

⁷⁸ League of Nations, *Treaty Series*, vol. CXX (1931-1932), No. 2764, p. 155.

latter are international institutions, (the goals of which are in harmony with those of the Association and to which that status is accorded by the International Committee of Comparative Law, which is the Executive Committee of the Association. The Association has no individual members.

174. National committees exist in the thirty-nine countries listed in annex I. Of these, six countries have centrally planned economies. Geographically, twenty-three are European, seven Latin American, six Asian, two North American and one African. The Association has a Council, an Executive Committee (the International Committee of Comparative Law) and a Secretary-General. The Association, assisted by UNESCO, held four colloquia on the law of international trade: in Helsinki in 1960; in Trier in 1961; in London in 1962; and in New York in 1964. The research of these colloquia is contained in three volumes, with a fourth in preparation.⁷⁹

175. The Association is currently sponsoring the publication, under the general direction of the Max Planck Institut für ausländisches und internationales Privatrecht, in Hamburg, of an International Encyclopedia of Comparative Law which will deal, in large part, with the law relating to international trade.

4. THE INTERNATIONAL LAW ASSOCIATION (ILA)

176. The International Law Association was founded on 10 October 1873. According to article II of its constitution, as amended in 1950 and 1958, its objects include "the study, elucidation and advancement of international law, public and private, the study of comparative law, the making of proposals for the solution of conflicts of laws, and for the unification of law, and the furthering of international understanding and goodwill".

177. The International Law Association is a non-governmental organization, established in London, which in 1956 had over 2,600 members who were either individuals or bodies.⁸⁰ In 1962 it had thirty-four branches in countries located in all continents and belonging to different economic systems, including the United States and the USSR.⁸¹

178. The Association, which has an Executive Council and a Secretary-General, arranges biannual conferences at which a number of topics pertaining to public and private international law are discussed. The reports of these meetings are published.

179. The major contributions of the International Law Association are: the formulation of the York-Antwerp Rules 1950 on the adjustment of General Average; and the drafting of The Hague Rules relating to bills of lading, which formed the basis of the Brussels Convention on Bills of Lading of 25 August 1924 (see para. 171 above).

⁷⁹ Harold J. Berman and others, *Aspects juridiques du commerce avec les pays d'économie planifiée* (Paris, Librairie générale de Droit et de Jurisprudence, 1961); *Some Problems of Non-Performance and Force Majeure in International Contracts of Sale*, edited by H. E. Jokela (Helsinki, Institute of Comparative Law at the University of Helsinki, 1961); *The Sources of the Law of International Trade with special reference to East-West Trade*, edited by Clive M. Schmitthoff (New York, Praeger, 1964); and *L'unification du droit de la vente internationale*, edited by John Honnold (in preparation).

⁸⁰ See N. V. Boeg, "The International Law Association" in *Liber Amicorum of Congratulations to Algor Bagge....* (Stockholm, Norstedt, 1956).

⁸¹ International Law Association, *Report of the 50th Conference*, (Brussels, 1962), pp. lii to lxvii.

180. In addition, the Association has made a number of valuable suggestions for the unification of international commercial law, such as the Rules of Copenhagen of 1950, which deal with commercial arbitration.

5. THE INSTITUTE OF INTERNATIONAL LAW

181. The Institute of International Law is a non-governmental organization founded in 1873 and having its headquarters in Paris. It has fifty-seven members and fifty-five associate members from thirty-nine countries. The members and associate members serve in their individual capacity and are selected from among persons who have rendered valuable service to international law, either in the theoretical or practical sphere.

182. Among the objectives of the Institute is the promotion of the progressive development of international law by giving assistance to genuine attempts at gradual and progressive codification of international law.

183. In the field of international commercial law, various commissions of the Institute have dealt with such topics as the legal aspects of capital investments in the developing countries (9th Commission); the contract of transport in private international law (19th Commission); and companies in private international law (28th Commission).

D. Summary: main areas of harmonization and unification

184. The foregoing survey has shown that, in addition to matters relating to industrial property and transportation by sea, air and land, the following are the major areas in which the most progress has been made towards the unification and harmonization of the law of international trade: the law of international sale of goods; the law relating to the supply and erection of plant and machinery abroad; the law relating to bills of exchange; the law relating to bankers' commercial credits; and the law of commercial arbitration.

185. With respect to the *law of international sale of goods* the major formulations are: the Convention of 1 July 1964 relating to a Uniform Law on the International Sale of Goods (Corporeal Movables), promoted by the International Institute for the Unification of Private Law; the Convention of 1 July 1964 relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (Corporeal Movables), promoted by the same organization; the Convention of 15 June 1955 on the Law Applicable to International Sales of Goods, promoted by The Hague Conference on Private International Law; Incoterms 1953, sponsored by the International Chamber of Commerce; General Conditions of Delivery of Goods, 1958, issued by the Council for Mutual Economic Assistance; Various General Conditions for Sale and Standard Forms of Contract elaborated by ECE; the Convention of 15 April 1958 on the Competence of the Forum in the International Sale of Goods; and the Convention of 25 November 1965 on the Choice of Court, sponsored by The Hague Conference.

186. In the area of the *law relating to the supply and erection of plant and machinery abroad* the only formulations are General Conditions (Forms Nos. 188, 188A, 574 and 574A) issued by ECE.

187. As regards *bills of exchange*, a considerable degree of uniformity of law has been achieved by the Geneva Conventions on the Unification of Law relating

to Bills of Exchange and to Cheques of 1930 and 1931, sponsored by the League of Nations.

188. With respect to *bankers' commercial credits*, the only formulation available is the Uniform Customs and Practice for Documentary Credits (1962 Revision), sponsored by the International Chamber of Commerce.

189. In the area of *commercial arbitration*, the following should be mentioned: the Geneva Protocol of 1923 and the Geneva Convention of 1927, both sponsored by the League of Nations; the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958; the European Convention on International Commercial Arbitration, sponsored by ECE; the Council of Europe Convention on International Commercial Arbitration and on Uniform Law on Arbitration; the ECAFE Centre for Commercial Arbitration, and the Convention on the Settlement of Investment Disputes between States and Nationals of other States, sponsored by the International Bank for Reconstruction and Development.

III. Methods, approaches and topics suitable for the progressive harmonization and unification of the law of international trade

A. Methods

190. An analysis of the work thus far done in this area reveals that essentially three methods have been adopted to further the progressive unification and harmonization of the law of international trade.

191. The first is the introduction of normative regulations devised and elaborated within the framework of international treaties and agreements concluded by two or more States. Illustrations of this method are the General Conditions of Delivery of Goods 1958, issued by the Council for Mutual Economic Assistance (CMEA), the Brussels Convention of 1924 on Bills of Lading, the Geneva Conventions on the Unification of the Law relating to Bills of Exchange and to Cheques of 1930 and 1931, The Hague Convention of 1955 on the Applicable Law relating to International Sales of Goods, and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

192. The second, which is, in effect, an alternative to the first, is the formulation of model laws to serve as guides for local adaptation, and uniform laws to be incorporated by States into their legislation. Examples of the former are model laws prepared under the auspices of the United International Bureaux for the Protection of Intellectual Property (BIRPI); examples of uniform laws may be found in the practice of the Scandinavian countries acting within the framework of the Nordic Council.

193. The third consists in the formulation, normally under the auspices of an international agency, of commercial customs and practices which are founded upon the usages of the international commercial community. Illustrations of the third method mentioned are the Incoterms 1953 and the Uniform Customs and Practice for Documentary Credits, prepared by the International Chamber of Commerce (ICC), and the various General Conditions of Sale and Standard Forms of Contract sponsored by the Economic Commission for Europe (ECE).

194. Essential differences exist among the methods described above. The first and second are applied by

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virtue of the authority of the State, whereas the third is founded upon the autonomy of the will of the parties who adopt it as the régime applicable to the individual transaction at hand.

195. The experience of the past has shown that each of these methods is essential to the unification of the law of international trade and, furthermore, that each complements the other. It is therefore evident that the future development of the law of international trade requires that all of them should continue to be actively pursued.

B. Approaches

196. Until now there has been a variety of approaches to the progressive harmonization and unification of international trade law. One approach encompasses geographically contiguous countries having similar political, economic and legal systems and a comparable stage of economic development. When all these factors are present a considerable measure of harmonization may be achieved, as has happened among the Scandinavian countries belonging to the Nordic Council.

197. Unifying measures have also been taken among countries having a similar socio-economic system, regardless of geographical location; this is the case for the members of CMEA which includes nine countries having centrally planned economies, eight in Europe and one in Asia. In other cases there has been a measure of unification among countries located in the same region, regardless of their socio-economic system; this approach has been followed, for example, by European countries in the context of ECE. A degree of unification has also been achieved among countries belonging to common markets and free trade areas which are committed to the integration of their trading areas and institutions; this is the case for the countries belonging to the European Economic Community and for those belonging to the European Free Trade Association.

198. Another approach has been based on the premise that it would be in the interest of developing countries having a comparable stage of economic development to adopt, on certain subjects, uniform provisions which should be especially geared to the requirements of their economies. This approach was followed in the preparation of the recent Model Law for Developing Countries on Inventions⁸² which was elaborated by BIRPI, with the co-operation of the United Nations.

199. Finally, steps have been taken to further harmonization and unification on a world-wide scale. Perhaps the most successful example is the 1962 Revision of the Uniform Customs and Practice for Documentary Credits issued by the ICC, which has been accepted in 173 countries and territories.

200. All of the foregoing approaches are complementary and any of them may prove to be the most practical for a particular topic, depending on the economic, legal and other factors involved.

201. Undoubtedly, it may be easier to make progress in harmonizing national laws and practices when the countries involved have similar legal or socio-economic systems. However, international trade transcends geographical proximity and legal, social or economic affinity. A country often engages in more trade with a

country having a different legal or economic system and located in another part of the world than it does with a contiguous country with which it has closer bonds. In such cases only harmonization on a world-wide scale would help reduce the obstacles of a legal nature hampering the flow of trade between those countries.

202. It should be stressed that modern commercial life, which has been affected by technological advances with respect to travel and transport and by the rapprochement of different economic systems, tends to require to a great extent harmonization and unification on a broad scale with respect to the law of international trade. The following comment made by Professor Tunc, although it refers to the internal legislation of a particular country, is relevant to the present study in that it points out the interdependence of the progressive development of international trade law:

"Today France must amend her legislation, knowing that she will have to amend it again tomorrow to comply with the constitution of the Common Market; for at the same time, she may have to amend it to harmonise it, at least in some fields, with the legislations of the seven members of the European Free Trade Association or of the eight members of the socialist Council for Mutual Economic Aid; later on, the problem will be of harmonisation with the legislations of the twenty member nations of the Organization for Economic Co-operation and Development, with the seven members of the Montevideo Treaty and with other trade associations in Africa or Asia."⁸³

C. Suitable topics

203. In considering topics suitable for harmonization and unification, three general observations should be made. First, whether harmonization is attempted on a world-wide scale or not, it is more easily achieved in technical branches of the law than in subjects closely connected with national traditions and basic principles of domestic law. Thus, harmonization has been most widely accepted in the law of industrial property, transportation by sea, air and land, international banking (bills of exchange and commercial credits) and arbitration.

204. Secondly, it should be kept in mind that the unification process is desirable *per se* only when there is an economic need and when unifying measures would have a beneficial effect on the development of international trade.

205. Thirdly, in addition to their direct impact, unifying measures tend to have what has been called a "radiation" effect.⁸⁴ This occurs when, for example, a State which is not a party to an international convention decides to apply the principle on which the convention is founded, or when a unifying technique used in one international instrument is subsequently made part of another. Thus, as has been previously noted (paras. 42-43), the principle that the seller's law is the presumptive law in conflict problems arising from the international sale of goods, which was incorporated in The Hague Convention of 15 June 1955, has been followed with respect to ECE's General Conditions of Delivery of Goods and General Conditions, Forms Nos. 188, 574 and 730.

⁸² See André Tunc, "English and Continental Commercial Law," in *Journal of Business Law*, (London, 1961), p. 246.

⁸⁴ *Ibid.*, p. 240.

⁸³ BIRPI publication 801 (E), Geneva, 1965.

206. It would be premature at this stage to make specific suggestions regarding desirable priorities in the future work of unification, or to identify topics particularly suitable for world-wide or other action.

207. Nevertheless, most unification activities have been in the areas mentioned in paragraph 184 above. Further progress in those areas could be made, for instance, by encouraging wider participation in the conventions relating to the international sale of goods, bills of exchange and arbitration, and wider adoption of certain contractual forms and definitions of frequently used commercial terms. In addition, it would be beneficial to international trade if more efforts were made in the direction of unification on such topics as problems of agency law, including those relating to commission agents and brokers; the law relating to joint ventures by bodies incorporated in different countries; rules relating to corporations entering into foreign trade relations; and the general law of contract, as far as it is relevant to international trade, e.g., problems of frustration and *force majeure*, or of time limits and prescription.

IV. Role of the United Nations in the progressive harmonization and unification of the law of international trade

A. Progress and shortcomings of the work in the field of harmonization and unification of the law of international trade

208. The preceding survey of the work done up to now in the unification and harmonization of the law of international trade shows a picture of some progress but at the same time some significant shortcomings.

209. Owing primarily to the efforts of the "formulating agencies", there has been a degree of unification and harmonization, especially on such subjects as the international sale of goods, bills of exchange, bankers' commercial credits, international maritime trade, and commercial arbitration.

210. On the other hand, an objective evaluation of the efforts made in this field cannot fail to reveal the following main shortcomings:

(a) The progress made in the unification and harmonization of the law of international trade has been rather slow in relation to the amount of time and effort expended on it. The relatively modest results obtained up to now are attributable to a number of factors, such as the difficulties inherent in any attempt to bring about changes in national legislation and practices, and the limited membership and authority of formulating agencies. As a consequence, the completion of the technical work of preparing draft conventions, model laws or uniform laws has often failed to culminate in an international conference or in the adoption of uniform legislation. Where conventions have been adopted, generally speaking only a small percentage of the present Members of the United Nations have become parties.

(b) The developing countries of recent independence have had the opportunity to participate only to a small degree in the activities carried out up to now in the field of harmonization, unification, and modernization of the law of international trade. Yet those are the countries that especially need adequate and modern laws, which are indispensable to gaining equality in their

international trade.⁸⁵ In many of these States the prevailing legal system was introduced before their independence by the metropolitan countries; often the provisions thus received are unsuitable to their present stage of economic development or to the requirements of newly independent states.⁸⁶ The unification process in the field of international trade law would be a step in the direction of remedying this situation. As to the attitude of new States towards playing a more active role in this endeavour, the following words written by an authority on African law are significant:

"African countries have not opted out of discussions on world unification of laws—quite the contrary; I am sure that they wish to be more closely and directly involved in such discussions in the future than they have been in the past."⁸⁷

(c) None of the formulating agencies commands world-wide acceptance; none has a balanced representation of countries of free enterprise economy, countries of centrally planned economy, developed and developing countries. In some cases, those agencies have a membership confined either to countries of centrally planned economy (e.g. CMEA) or to countries of free enterprise economies (e.g. the ICC); in other instances, members must belong to a specific region (e.g. the ECE). In the case of UNIDROIT, although there is no geographical limitation on membership, the present membership is predominantly European.

(d) There has been insufficient co-ordination and co-operation among formulating agencies. Therefore, their activities have tended to be unrelated, and a considerable amount of duplication has resulted. The following observations made some years ago by the late Professor H. C. Gutteridge still seem relevant:

"The most urgent problem of all, however, is that of the waste of effort and confusion that has, at times, been caused by the existence of competing agencies engaged in the work of unification. The remedy for this state of affairs would seem to lie the establishment of a rallying ground for unificatory activities—a kind of international clearing house—which would co-ordinate and supervise activities of this nature and also facilitate the collection of any information that might be required, either from governmental or other sources. . . it would be possible, in this way, to avoid the overlapping of attempts to achieve uniformity, and to discourage the

⁸⁵ As the representative of Hungary said, "It was particularly important for them [the developing countries] that the law of international trade should be updated and guarantee the highest security so that they would not be at the mercy of more experienced trade partners." (See *Official Records of the General Assembly, Twentieth Session, Sixth Committee, 894th meeting, para. 8.*)

⁸⁶ The technique of law reception is not a phenomenon which relates solely to the recent history of newly independent States. The legal systems of some countries or territories which in the past were dependencies of European States are still influenced by the law of the former colonial Powers. Thus the law in almost all states of the United States is derived from English law; many Latin-American States have received Spanish law; the Province of Québec in Canada and the State of Louisiana in the United States have received French law. Furthermore, as between sovereign States the problem of adaptation to modern conditions has sometimes been dealt with by the same technique of law reception. Thus, for example, modern Greek and Japanese law have received German law and modern Turkish law has received Swiss law.

⁸⁷ See A. N. Allott, "Towards the Unification of Laws in Africa," in *International and Comparative Law Quarterly* (London), vol. 14, 1965, p. 389.

ill-timed, or over-ambitious, projects which are largely responsible for the paucity of success which has hitherto characterised the movement for the unification of law."⁸⁸

B. Desirable action to remedy the existing shortcomings

211. The General Assembly, in the preamble to resolution 2102 (XX), has recognized that "conflicts and divergencies arising from the laws of different States in matters relating to international trade constitute an obstacle to the development of world trade" and has expressed its conviction that "it is desirable to further co-operation among the agencies active in this field and to explore the need for other measures for the progressive unification and harmonization of the law of international trade".

212. To remedy the shortcomings described above, several measures such as the following should be taken. The process of harmonization and unification of the law of international trade should be substantially systematized and accelerated. This would entail a concerted effort to secure a wider participation in existing international conventions and a wider adoption of uniform legislation, where such conventions and uniform laws reflect the present requirements of world trade, as well as a wider use of standard trade terms, provisions and practices. It would also entail action towards further unification and modernization of legal techniques in this area, such as the adoption of new international conventions and uniform laws, codification of existing rules and trade practices and the dissemination of information on up-to-date methods and solutions. In addition, it would be desirable to secure a broad participation of the developing countries of recent independence in the progressive development and codification of the law of international trade; this would facilitate the adoption by those countries of laws and other measures adequate for the protection of the interests of their international trade transactions. Finally, it would be appropriate to bring about a close co-ordination of the activities of the existing formulating agencies, regardless of whether their members belong to one or another economic or legal system.

C. Role of the United Nations

213. It should now be considered whether it would be desirable for the United Nations to assume responsibilities in this field and, if so, what should be the extent of such responsibilities. In this connexion, the following questions should be examined.

1. IS THE UNIFICATION AND HARMONIZATION OF THE LAW OF INTERNATIONAL TRADE AN APPROPRIATE SUBJECT FOR UNITED NATIONS ACTION?

214. Action by the United Nations for the purpose of removing or reducing legal obstacles to the flow of international trade would be properly within the scope and competence of the Organization under the terms of Articles 1 (3) and 13, Chapters IX and X of the United Nations Charter. In particular, such action would be fully consistent with General Principle Six of the United Nations Conference on Trade and Development (UNCTAD) which reads: "International trade is one of the most important factors in economic de-

velopment. It should be governed by such rules as are consistent with the attainment of economic and social progress and should not be hampered by measures incompatible therewith."

215. As previously mentioned in this report, the United Nations has already been engaged in some activities in the field of unification and harmonization of the law of international trade. But so far, there has been no attempt to survey the field as a whole in order to co-ordinate the activities of the different United Nations organs concerned and select the most suitable subjects. Consequently, the choice of subjects has been largely accidental and the activities often unrelated to one another.

216. What the United Nations has accomplished in the promotion of the law of international trade is insignificant compared with what it has done in promoting economic and social development. Although there is an increasing awareness that a modern legislative framework is the necessary foundation for sound economic and social progress, there is still what may be called a "legal lag".⁸⁹ There is no doubt, therefore, that United Nations action would be both appropriate and desirable.

2. WOULD A UNITED NATIONS PARTICIPATION IN THIS ACTIVITY UNNECESSARILY DUPLICATE THE WORK OF EXISTING AGENCIES AND REDUCE OR ABOLISH THEIR USEFULNESS?

217. One of the main reasons for the relatively slow progress made in the past has been the limited membership and authority of formulating agencies. This has resulted in a disproportion between the number of draft instruments prepared by formulating agencies and their acceptance by States. In view of its worldwide membership and authority, the United Nations would provide a most appropriate forum for convening international conferences for the adoption of conventions. Where unification and harmonization take the form of recommendations for the adoption of uniform laws and standard practices, such recommendations would be addressed directly to all Member States of the United Nations, thus increasing the chances of broad acceptance.

218. Rather than reducing the usefulness of existing formulating agencies, an active United Nations interest and participation in this work would tend to broaden their scope and enhance their activities. For example, some of the draft instruments prepared in the past by formulating agencies could be revised in the light of present requirements and could eventually be submitted to the United Nations for action; the Organization could request formulating agencies specializing in different subjects to deal with specific topics and could utilize those agencies' expert advice in general. Accordingly, it may be expected that United Nations participation in this field would increase the usefulness of existing formulating agencies, and improve the chances of bringing their work to a successful conclusion.

⁸⁹ The representative of the Netherlands said, "The United Nations was already in the middle of the Development Decade, while the United Nations Conference on Trade and Development had initiated an ambitious programme of co-operation for economic development and the expansion of international trade. It was therefore important that the development of the law should not lag behind technical progress and material achievements..." (See *Official Records of the General Assembly, Twentieth Session, Sixth Committee*, 896th meeting, para. 13.)

⁸⁸ See H. C. Gutteridge, *Comparative Law*, 2nd ed. (Cambridge, University Press, 1949), pp. 183-184.

3. WOULD THE UNITED NATIONS BE IN A POSITION TO MAKE A SIGNIFICANT CONTRIBUTION TO FURTHERING UNIFICATION ON A WORLD-WIDE SCALE OR OTHERWISE?

219. As mentioned above (paragraphs 196 to 202), the choice of the approach to be followed in bringing about unifying measures depends on a variety of legal, economic and social factors. While world-wide unification may be desirable and feasible for certain topics, a different approach may commend itself with respect to others.

220. As the United Nations comprises practically all the countries of the world, representing the various legal, economic and social systems as well as all stages of economic development, it would be in the best position to examine the question of the choice of approach (world-wide, regional or other) in the light of the relevant circumstances, acting as a kind of international clearing house for unification activities. The United Nations would also be in the best position to determine, for any topic, which method of unification should be adopted (international convention, model law, uniform law, harmonization or codification of commercial practices) and to provide the most suitable forum for unifying measures on a world-wide scale.

4. SHOULD THE FUNCTIONS OF THE UNITED NATIONS BE CONFINED TO CO-ORDINATION OR SHOULD THEY ALSO ENCOMPASS FORMULATION?

221. As the need for better co-ordination in this area is generally acknowledged, it seems clear that the United Nations could perform a useful role in promoting contacts and furthering collaboration between the existing formulating agencies, exercising some kind of supervision over their activities and initiating unifying measures. The performance of these functions would require the ability to exercise judgement, *inter alia*, on which projects and draft instruments should be carried to a conclusion and which should be revised and which shelved, as well as on the respective roles of existing formulating agencies. If a sufficient expertise to perform these tasks is to be acquired, it would be necessary to create a United Nations organ consisting of highly qualified authorities in the field, including experts from developing countries who would thus have the opportunity to participate actively in the work of unification. While co-ordination should be the primary function of such a United Nations organ, it would appear desirable not to confine it to a co-ordinating role but to authorize it, when appropriate, to perform formulating functions as well.

5. IS THERE A REALISTIC CHANCE OF SUCCESS OR IS THE TASK TOO DIFFICULT FOR TANGIBLE RESULTS?

222. Since one of the purposes of unification and harmonization is to bring about changes in national laws, the difficulties of this endeavour should not be underestimated. However, the matters relating to the unification of the law of international trade are primarily of a technical nature. It should therefore be less difficult to adapt national rules to the needs of international trade, than to unify rules on such matters as family law, succession, personal status, and other subjects deeply rooted in national or religious traditions. The common interest of all countries in removing or

reducing obstacles to international trade should also act as an incentive towards progress.

223. Another difficulty that has been mentioned is that excessive zeal might lead to unification at the lowest common denominator. There is no merit in unification if it results in the adoption by a group of States of the legal concepts acceptable to the least progressive among them. Nor is there any merit in formulating a convention or uniform law on a subject which would not appreciably benefit international trade. Accordingly, it is most important that any attempt at unification and harmonization should be preceded by a thorough search for the right and ripe topics. It is essential that the topics should be selected in close collaboration between legal experts and trade experts familiar with the requirements of international trade and its priorities, and aware of what results can be realistically achieved.

224. Progress in this field is bound to be rather slow, but the pace of such progress can be substantially accelerated if the United Nations assumes an active role and if Member States give it sustained and continuing support.

D. Establishment of a United Nations commission on international trade law

225. There is no existing United Nations organ which is both technically competent in this field and able to devote sufficient time to such a complex and long-term endeavour. The General Assembly may, therefore, wish to consider the possibility of establishing a new commission which might be called the "United Nations Commission on International Trade Law".

226. It would be essential to assure the most active and broadly based support of Governments, and at the same time to provide for the participation of recognized authorities in this field of law. It would therefore appear advisable to provide that the membership of such a commission should be composed of an appropriate number of States, elected by the General Assembly, and to provide, further, that the representatives of these States, appointed by them to serve on the commission, should be persons of eminence in the field. In this connexion, it may be recalled that a similar, but not identical arrangement was adopted under the terms of Economic and Social Council resolution 903 C (XXXIV) of 2 August 1962, dealing with the establishment of the Committee on Housing, Building and Planning. The Committee was "composed of eighteen States Members of the United Nations, elected by the Council . . . , the representatives on this committee to be designated by the Governments of these States in agreement with the Secretary-General, with a view to achieving, as far as possible, a balanced coverage of required expertise . . .". This arrangement is similar to the one suggested above.

227. It is suggested that the commission should have the following functions: to further the progressive harmonization and unification of the law of international trade by:

(a) Co-ordinating the work of organizations active in this field and encouraging co-operation among them;

(b) Promoting wider participation in existing international conventions, and wider acceptance of existing model and uniform laws;

(c) Preparing, and promoting the adoption of, new international conventions, model laws and uniform laws, and the codification and wider acceptance of international trade terms, provisions, customs and practices;

(d) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade;

(e) Collecting and disseminating information on national legislation and modern legal developments in the field of the law of international trade;

(f) Maintaining liaison with UNCTAD, the Economic and Social Council and other United Nations organs and specialized agencies concerned with international trade;

(g) Taking any other action as it may deem useful to achieve its purposes.

228. The question of whether, and to what extent, the commission would deal with unification of conflict rules, in addition to unification of substantive rules, might be for the commission itself to consider at the appropriate time.

229. Because the work of the commission would be of an essentially technical nature, including a certain amount of legal drafting, it would seem desirable to have a membership of eighteen, and in any event not more than twenty-four. The commission should have an adequate representation of countries of free enterprise and centrally planned economies, and of developed and developing countries.

230. As the functions of the commission pertain to the field of law and trade, it must be considered whether the commission should report directly to the General Assembly or to UNCTAD which would, in turn, report to the General Assembly. Although important trade aspects would be involved requiring close liaison with UNCTAD, it seems clear that the bulk of the work would be of a technical legal nature. In these circumstances, it may be appropriate that the commission should report directly to the General Assembly, so that its activities would be considered by the Sixth (Legal) Committee at an early stage. The reports would be submitted simultaneously to UNCTAD for its comments. Any comments that UNCTAD may wish to make would be transmitted through the Economic and Social Council for consideration by the General Assembly and by the Sixth Committee, when the reports of the commission are examined. Such comments might, as appropriate, contain recommendations to the General Assembly on topics for inclusion in the programme of work of the commission. This arrangement would not only ensure the most expeditious and thorough consideration of the commission's work but also the indispensable close liaison with UNCTAD. It would also provide the commission with the central role and the appropriate level necessary for the effective performance of its functions.

231. The fourth session of the Trade and Development Board of UNCTAD, at its 113th meeting on 23 September 1966, considered the question of the progressive development of the law of international trade. The section of the report of the Trade and Development Board (A/6315) dealing with this matter is reproduced in annex I.

232. In view of the vast scope and complexity of the commission's work it would be necessary to establish,

within the Office of Legal Affairs, a new secretariat unit comprising three or four qualified officers, devoting its full time to work in this field.

233. In order to render effective assistance to the commission, the secretariat unit should be familiar with the different major legal systems of the world and with the problems of countries at various stages of economic development.

234. The functions of the unit would be:

(a) To provide the secretariat for the sessions of the commission and for international conferences and meetings of experts on the law of international trade;

(b) To assist the commission in its co-ordinating functions by:

(i) Preparing studies of the work done in the past and of the current work of formulating agencies, in order to ascertain the stage reached with respect to the different topics, and to examine what further action towards unification and harmonization is desirable;

(ii) Maintaining appropriate liaison with the secretariats of UNCTAD, other United Nations organs, specialized agencies and other interested inter-governmental and non-governmental organizations, as required in the performance of the commission's functions;

(c) To prepare studies and recommendations on problems concerning the unification and harmonization of the law of international trade, including comparative analyses of national legislation, studies and research on particular topics at the request of the commission and, when practicable, of other United Nations organs;

(d) To organize and maintain a comprehensive collection of national legislation and treaties pertaining to the law of international trade, and of documentation on modern developments in this field, and to provide information thereon to the commission, to other interested United Nations organs and to States, within the limits of available resources;

(e) To provide services in connexion with technical assistance activities in this field, within the limits of available resources.

E. Financial implications of the establishment of a United Nations commission on international trade law

235. This study of the progressive development of the law of international trade has been prepared in response to General Assembly resolution 2102 (XX), in which it was requested that the Secretary-General submit a report to the General Assembly examining what has been accomplished, what might be accomplished, and what institutions might be utilized in promoting the goal of harmonizing and unifying the law of international trade. In this report it is suggested that the General Assembly may wish to consider the possibility of establishing a new commission, which might be called the "United Nations Commission on International Trade Law". The Secretary-General would be prepared to submit the financial implications of the establishment of such a commission at the appropriate time after Member States have had an opportunity to consider what course of action it would be most appropriate for the United Nations to follow and when their views and wishes on the details of any possible new arrangement are more clearly known.

Annexes

ANNEX I

Additional data on the activities of organizations concerned with the law of international trade

A. UNITED NATIONS: LIST OF SIGNATORIES AND STATES PARTIES TO THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

[Original text: English]

<i>State and date of signature</i>	<i>Date of receipt of instrument of ratification or accession</i>
Argentina (26 August 1958)	
Austria	2 May 1961
Belgium (10 June 1958)	
Bulgaria (17 December 1958)	10 October 1961
Byelorussian Soviet Socialist Republic (29 December 1958)	15 November 1960
Cambodia	5 January 1960
Central African Republic	15 October 1962
Ceylon (30 December 1958)	9 April 1962
Costa Rica (10 June 1958)	
Czechoslovakia (3 October 1958)	10 July 1959
Ecuador (17 December 1958)	3 January 1962
El Salvador (10 June 1958)	
Federal Republic of Germany (10 June 1958)	30 June 1961
Finland (29 December 1958)	19 January 1962
France (25 November 1958)	26 June 1959
Greece	16 July 1962
Hungary	5 March 1962
India (10 June 1958)	13 July 1960
Israel (10 June 1958)	5 January 1959
Japan	20 June 1961
Jordan (10 June 1958)	
Luxembourg (11 November 1958)	16 July 1962
Madagascar	
Monaco (31 December 1958)	12 February 1959
Morocco	24 April 1964
Netherlands (10 June 1958)	14 October 1964
Niger	14 March 1961
Norway	
Pakistan (30 December 1958)	3 October 1961
Philippines (10 June 1958)	13 September 1961
Poland (10 June 1958)	1 June 1965
Romania	9 March 1959
Sweden (23 December 1958)	21 December 1959
Switzerland (29 December 1958)	14 February 1966
Syria	
Thailand	10 October 1960
Trinidad and Tobago	24 August 1960
Ukrainian Soviet Socialist Republic (29 December 1958)	9 March 1959
Union of Soviet Socialist Republics (29 December 1958)	13 October 1964
United Arab Republic	
United Republic of Tanzania	

B. UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE: GENERAL CONDITIONS OF SALE AND STANDARD FORMS OF CONTRACT SPONSORED BY THE ECE

1. *Contracts for the sale of cereals*

<i>Nos.</i>	
1A, 1B	
2A, 2B	
3A, 3B	c.i.f. (maritime)
4A, 4B	
5A, 5B	f.o.b. (maritime)
6A, 6B	consignment by Rail in complete Wagon Loads
7A, 7B	c.i.f. Inland Waterway
8A, 8B	f.o.b. Inland Waterway

2. *Plant and machinery: durable consumer goods*

- 188 General Conditions for the Supply of Plant and Machinery for export.
 Commentary on the General Conditions for the Supply of Plant and Machinery for Export No. 188.
- 188A General Conditions for the Supply and Erection of Plant and Machinery for Import and Export.
- 188B Additional Clauses for Supervision of Erection of Plant and Machinery Abroad.
- 188D Additional Clauses for Complete Erection of Engineering Plant and Machinery Abroad.
- 574 General Conditions for the Supply of Plant and Machinery for Export.
 — Commentary on the General Conditions for the Supply of Plant and Machinery for Export No. 574.
- 574A General Conditions for the Supply and Erection of Plant and Machinery for Import and Export.
- 574B Additional Clauses for Supervision of Erection of Plant and Machinery Abroad.
- 574D Additional Clauses for Complete Erection of Plant and Machinery Abroad.
- 730 General Conditions of Sale for the Import and Export of Durable Consumer Goods and of other Engineering Stock Articles.
 — Commentary on the General Conditions of Sale for the Import and Export of Durable Consumer Goods and of other Engineering Stock Articles No. 730.

3. *Miscellaneous*

- 312 General Conditions for the International Sale of Citrus Fruit.
- 410 General Conditions for Export and Import of Sawm Softwood.
- 420 General Conditions for the Export and Import of Hardwood Logs from the Temperate Zone.
- Coal/Cond.
- Sales 16. General Conditions for the Export and Import of Solid Fuels.
- Trans/263 General Conditions for International Furniture Removal.

C. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT: EXCERPTS FROM THE REPORT OF THE TRADE AND DEVELOPMENT BOARD ON ITS FOURTH SESSION (A/6315, PART TWO, CHAPTER XI)*

3. *Consideration of steps to be taken for the progressive development in the field of private international law with a particular view to promoting international trade*
166. The Board had before it the text of General Assembly resolution 2102 (XX) entitled "Consideration of steps to be taken for progressive development in the field of private international law with a particular view to promoting international trade" (TD/B/92).
167. The delegations of Argentina, Bolivia, Brazil, Bulgaria, Cameroon, Ceylon, Chile, Congo (Democratic Republic of), Dahomey, Ecuador, El Salvador, Ethiopia, Ghana, Guinea, Honduras, Hungary, India, Indonesia, Iran, Iraq, Lebanon, Madagascar, Mali, Mexico, Morocco, Nigeria, Pakistan, Philippines, Poland, Romania, United Arab Republic, United Republic of Tanzania, Uruguay and Yugoslavia, submitted the following joint draft resolution (TD/B/L.98):

"Progressive development of the law of international trade
"The Trade and Development Board,

"Considering that the development and reinforcement of international economic relations, including trade relations, constitute important factors of economic and social progress,
"Recalling resolution 2102 (XX) adopted unanimously by the General Assembly at its twentieth session, under the terms of which the Assembly will give consideration, at its twenty-first session, to the question of 'the United Nations organs and other agencies which might be given responsibilities with

* For the final text of this report, see *Official Records of the General Assembly, Twenty-first session, Supplement No. 15.*

a view to furthering co-operation in the development of the law of international trade and to promoting its progressive unification and harmonization'.

"*Bearing in mind* the functions and responsibilities that devolve upon UNCTAD under the terms of paragraph 3 of General Assembly resolution 1995 (XIX),

"*Emphasizing* that by its objectives, tasks and composition, UNCTAD is the most appropriate body for the examination, on a permanent basis, of the unification, harmonization and modernization of international trade law, which constitute essential factors in the expansion of international commerce,

"*Considering* that notwithstanding the commendable efforts of various international bodies, including the regional economic commissions, the activities which are being carried out in this field are largely circumscribed to the developed countries, lack co-ordinated direction and do not reflect fully the interests and requirements of the developing countries,

"*Stressing* the need for a world-wide approach in all further action relating to international conventions, agreements and juridical instruments, uniform or model legislation applicable to international trade, standard contract provisions, general conditions of sale, standard trade terms and other measures, as a means of promoting broader and better trade relations between all countries,

"1. *Welcomes* the action thus far taken by the General Assembly on this subject as well as the view expressed by the Assembly that 'the interests of all peoples, and particularly those of the developing countries, demand the betterment of conditions favouring the extensive development of international trade';

"2. *Recommends* to the General Assembly to consider measures to intensify the activities of the United Nations in this respect laying special emphasis on the needs and interests of the developing countries;

"3. *Recommends* also to the General Assembly to recognize the special responsibilities of UNCTAD in this field and assign to it a central role in the progressive development of the law of international trade;

"4. *Recommends* further to the General Assembly to establish within UNCTAD, in conformity with resolution 1995 (XIX), appropriate permanent machinery for the consideration of steps geared to the progressive development of the law of international trade."

168. The representative of Uruguay, introducing the draft resolution on behalf of the sponsors, stated that its purpose was to convey to the Assembly the views of the Board as to the future activities of the United Nations in this field in view of the fact that, at its twenty-first session, the General Assembly would consider the United Nations organs and other agencies which might be given responsibilities in this respect. He recalled that the Assembly had been studying the matter in line with a proposal made by Hungary shortly after the conclusion of the first Conference on Trade and Development to the effect that the United Nations should have a more active role in this field. He further stated that it was essential to intensify efforts in this respect because, notwithstanding the existence of several institutions dealing with certain aspects of the law of international trade, such bodies were limited in scope and membership and lacked adequate direction and co-ordination.

169. The representatives of a number of developing countries and socialist countries of Eastern Europe supported the draft recommendation and stated that UNCTAD should be entrusted with the task of ensuring international co-operation in this field upon the basis of a pragmatic and world-wide approach. Against this background the Board would invite the General Assembly to recognize the special responsibilities of UNCTAD in the field of the progressive development of the law of international trade and assign to it a central role.

170. The representatives of a number of developed market-economy countries, while stressing the importance they attached to the subject-matter of the draft resolution, expressed the opinion that it would be inappropriate for the Board to take a position on the subject because the General Assembly had

decided to consider it at its twenty-first session and had requested the Secretary-General of the United Nations to prepare a report on the subject which was not as yet available. They further noted that it would not be desirable for the Board to prejudge the issue pending the consideration of the matter by the General Assembly in the light of that report.

171. It was agreed that the subject-matter of the draft resolution was of great importance and should be studied further. However, in the light of the considerations stated in the previous paragraph, the Board decided to defer its consideration of the draft resolution until its fifth session pending the circulation of the report prepared by the Secretary-General of the United Nations in accordance with General Assembly resolution 2102 (XX) and the consideration of this matter by the Assembly.

D. EUROPEAN ECONOMIC COMMUNITY: LIST OF MEASURES PROMOTED AND PREPARED BY THE EEC

1. Measures promoted

The Council of the European Economic Community has issued, on proposals submitted by the Commission, several directives which have for their purpose the elimination of restrictions in trade between Member States resulting from differences in technical rules. According to article 189 of the Treaty, directives shall be binding as to the result to be achieved on any Member State to which they are addressed, leaving to the national authorities the choice of forms and means for implementing them.

The directives already issued concern the following matters: admission of colouring matters for foodstuffs (*Official Gazette*, p. 2645/62, 2793/65); preserving agents (*ibid.*, p. 161/64, 3263/65); purity standards for preserving agents (*ibid.*, p. 373/65); health requirements for trade in pigs and cattle (*ibid.*, p. 1977/64); the same for fresh meat (*ibid.*, p. 2012/64); pharmaceutical products (*ibid.*, p. 369/65).

2. Measures being prepared

(a) Draft directives of the Council

The procedure used for the promoted measures is applied in various fields.

(i) *Removal of restrictions in trade resulting from differences in technical rules*: proposals of the Commission of the EEC submitted to the Council in such fields as motor vehicles, farm tractors, pharmaceutical products and industrial tools; and proposals of the Commission under preparation concerning measuring instruments, electrical household appliances and precious metals.

(ii) *Company law*: The Commission has already proposed to the Council a directive for approximating the rules governing the disclosure of various informations, the validity of the acts of directors and the voidability of companies. (This draft has been published in the *Official Gazette*, No. 194 of 27 November 1964, with the opinion of the Comité économique et social). The Commission is preparing other drafts in the same field.

(iii) *Insurance*: a directive is in preparation as regards the co-ordination of the national rules concerning the financial requirements and administrative control of the insurance companies. This proposal of directive is planned to be sent to the Council in a near future.

(b) Draft conventions among member States

Such Conventions, based on article 220 of the Treaty, are under preparation among the Member States with participation of the Commission.

The following are almost completed and not yet signed by the Member States: European patents; recognition of companies and legal persons; legal jurisdiction, recognition and enforcement of judgements in civil and commercial cases.

The following are less advanced: trade marks; models and designs; mergers of companies from different countries; maintenance of legal personality and transfer of a company's headquarters in another Member State; bankruptcy.

E. INTERNATIONAL CHAMBER OF COMMERCE: LIST OF MAIN PUBLICATIONS AND TOPICS OF STUDY

1. Publications

Document No. and date

International commercial practice

- Incoterms 1953 Brochure 166 (1953/1954)
 Trade terms Doc. 16 (1953/1955)
 International commercial terms:
 Draft international rules regarding sales "Delivered at Frontier" and "Delivered at Point of Destination" (In preparation)
 The Problem of Clean Bills of Lading Brochure 223 (1963)
 Commercial Agency: Guide for the drawing up of contracts between parties residing in different countries Brochure 213 (1961)
 Guide for the Formation of Companies (In preparation)

Banking technique and practice

- Uniform Customs and Practice for Documentary Credits Brochure 222 (1963)
 (Plus list of adherences as at 1 April 1966) Doc. 470/INT.79 (1966)
 Standard Forms for the Opening of Documentary Credits Brochure 159 (in course of revision) (1951/1952)
 Uniform Rules for the Collection of Commercial Paper Brochure 192 (in course of revision) (1957)
 Simplification of International Payment Orders Brochure 205 (1959)

Arbitration

- Rules of Conciliation and Arbitration Brochure "ch" (1955)
 Guide to ICC Arbitration Brochure 63-1 (1963)
 Commercial Arbitration and the Law throughout the World .. Doc. 11 (1949/1951/1958)
 International Commercial Arbitration and the Convention of New York Brochure 60-1 (1960)

Industrial property

- Model-law on trade marks, trade names and unfair competition Brochure 210 (1960)
 Revision of the Paris Union Convention Brochure 206 (1959)

Advertising practices

- Code of Fair Practices relating to Advertising and International Rules for the Transmission of Television Advertising dd (1955-1963) (revision pending)
 For the Normalization of Advertising Practices in Europe 209 (1960)
 For the Standardization of Tariffs and Contracts of Film Advertising in Europe 225 (1963)
 Television Advertising in Europe: Standardization of Rate Cards and Related Documents 238 (1964)

2. Subjects currently being studied by ICC commissions, or scheduled for study

- (a) *Banking technique and practice*
 Bank guarantees: study of the problems with a view to achieving some degree of standardization to ensure uniformity in the nature of the guarantees and their operation.
 (b) *International arbitration*
 Arbitration between States and private firms, with particular reference to the settlement of investment disputes.

(c) *Industrial property*

European patents and trade-marks; Licensing of patents, trade-marks and know-how.

(d) *Advertising practices*

Definition of the basic principles to be taken into consideration by Governments and authorities of the European Economic Community with respect to the harmonization of rules affecting outdoor advertising.

Study envisioning the expansion from the European level to the world-wide level of the recommendations of the ICC brochure 238 relating to standardization of contracts for television advertising.

F. INTERNATIONAL MARITIME COMMITTEE: LIST OF CONVENTIONS PREPARED BY THE IMC

1. Conventions for the Unification of Certain Rules of Law with Respect to Collision, Assistance, Salvage at Sea, Brussels, 20 September 1910
2. International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Seagoing Vessels, Brussels, 25 August 1924 (LNTS 120:123)
3. International Convention for the Unification of Certain Rules Relating to Bills of Lading, Brussels, 25 August 1924 (LNTS 120:155)
4. Convention for the Unification of Certain Rules Relating to Maritime Mortgages and Liens, Brussels, 10 April 1926 (LNTS 176:199)
5. Convention for the Unification of Certain Rules Relating to the Immunity of State-owned Vessels, Brussels, 10 April 1926 (LNTS 176:215) and the Protocol thereto, Brussels, 24 May 1934
6. International Convention Relating to the Arrest of Seagoing Ships, Brussels, 10 May 1952 (UNTS 439:193)
7. International Convention of Certain Rules Concerning Civil Jurisdiction in Matters of Collision, Brussels, 10 May 1952 (UNTS 439:217)
8. International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in matters of Collision or Other Incidents of Navigation, Brussels, 10 May 1952 (UNTS 439:233)
9. International Convention on the Limitation of the Liability of Owners of Seagoing Ships, Brussels, 10 October 1957
10. International Convention Relating to Stowaways, Brussels, 10 October 1957
11. International Convention for the Unification of Certain Rules Relating to the Carriage of Passengers by Sea, Brussels, 29 April 1961
12. Convention on the Liability of Operators of Nuclear Ships, Brussels, 25 May 1962

G. INTERNATIONAL ASSOCIATION OF LEGAL SCIENCE: NATIONAL COMMITTEES

National committees exist in the following countries: Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Czechoslovakia, Denmark, Federal Republic of Germany, Finland, France, Greece, Hungary, India, Iran, Israel, Italy, Japan, Lebanon, Luxembourg, Mexico, Netherlands, Nicaragua, Norway, Peru, Poland, Romania, Senegal, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Union of Soviet Socialist Republics, Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia.

ANNEX II

Additional data on the activities of the International Institute for the Unification of Private Law (UNIDROIT)

A. LIST OF ITEMS ON THE WORKING PROGRAMME OF THE INSTITUTE

[Original text: English]

1. Sale

- (a) *Convention relating to a Uniform Law on the International Sale of Goods (Corporal Movables) (LUVI)*. This item still included in the programme of work of the Institute

by reason of Recommendation No. I adopted by the Diplomatic Conference on the Unification of Law governing the International Sale of Goods, held at The Hague in April 1964, which requests the Institute to complete and publish each year a list of judicial and arbitral decisions relating to the interpretation and application of this uniform law. A further reason for the inclusion of this item in the programme of work of the Institute is Recommendation No. II, adopted by the same Diplomatic Conference, according to which the Institute shall establish a Committee composed of representatives of the Governments of interested States for the purpose, first, of reviewing the operation of this Law and preparing recommendations for any Conference of revision (cf. article XIV of the Convention) or, secondly, in the event of the Convention not having come into force by 1 May 1968, of considering what further action should be taken to promote the unification of law on the international sale of goods.

(b) *Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (Corporeal Movables) (LUFC)*. This item still included in the programme of work of the Institute by reason of Recommendation No. I adopted by the Diplomatic Conference on the Unification of Law governing the International Sale of Goods, held at The Hague in April 1964, which requests the Institute to compile and publish each year a list of judicial and arbitral decisions relating to the interpretation and application of this uniform law.

(c) *Credit sale and hire-purchase*. Work in progress.

(d) *Draft Uniform Law on the Conditions of Validity of the Contract of Sale (LUVAC)*. Work in progress.

(e) *Draft Uniform Law on the Protection of the Bona Fide Purchaser of Goods (Corporeal Movables) (LUAB)*. Work on this draft is still in progress but will presumably be concluded in the course of 1966.

(f) *Draft Convention relating to a Uniform Law on the Contract of Commission on the International Sale or Purchase of Goods (LUCVA)*. It is intended to submit this draft Convention to a diplomatic conference to be convened in the near future.

2. Transport

(a) *Co-ordination of the work of unification concerning the liability of the carrier for personal injuries sustained by passengers*. Work in progress.

(b) *Draft Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR)*. A diplomatic conference should be convened in 1967 by the Italian Government for the adoption of this draft Convention.

(c) *Draft Convention concerning the Contract for the Carriage of Goods by Inland Waterway (CMN)*. This draft is at the basis of the Convention on the Contract for the Carriage of Goods by Inland Waterway (CMN), which is at present before ECE.

(d) *Preliminary draft Convention on the Contract for the Carriage of Passengers and Luggage by Inland Waterway (CVN)*. Work in progress.

(e) *Draft Convention relating to the Limitation of the Liability of Boat Owners (CLN)*. Work on the draft completed.

(f) *Draft Convention on Salvage Service in Inland Navigation*. On the agenda of the Institute's Working Committee on the Unification of River Law.

(g) *General average in inland navigation*. On the agenda of the Institute's Working Committee on the Unification of River Law.

(h) *Insurance of the civil liability of carriers in inland navigation*. On the agenda of the Institute's Working Committee on the Unification of River Law.

(i) *Jurisdiction of the forum and enforcement of judgements in inland navigation*. On the agenda of the Institute's Working Committee on the Unification of River Law.

(j) *Uniform rules on transport by pipelines*. Work in progress.

(k) *Draft Convention on the Contract of Combined International Carriage of Goods*. A diplomatic conference should

be convened in 1967 by the Austrian Government for the adoption of this draft Convention.

(l) *Draft Convention on the Contract of Forwarding Agency in the International Carriage of Goods*. A diplomatic conference should be convened in 1967 by the Austrian Government for the adoption of this draft Convention.

(m) *Uniform provisions on travel agencies*. Work in progress.

(n) *Uniform provisions on the contract of bailment and the liability of persons and bodies other than the carrier who have goods in their custody in the course of the performance of the contract of carriage*. Work in progress.

(o) *Uniform provisions regarding the inspection and tallying of goods*. Item retained for the future programme of work.

3. Negotiable instruments

Widening of unification among legislations concerning negotiable instruments. Work in progress.

4. Miscellaneous

(a) *Methods of unification and harmonization of law*.

(b) *Study of measures designed to ensure uniformity of interpretation of uniform laws*. The Institute is examining ways and means with a view to implementing the conclusion reached on the basis of its work on this question since 1954. It should be added that the Institute is collecting and editing the most important case law pertaining to international uniform law Conventions (cf. the Institute's quarterly, *Jurisprudence de droit uniforme-Uniform Law Cases*, published since 1956).

(c) *Glossary of legal terms of trade*. Work suspended for the time being.

(d) *Draft Convention relating to a Uniform Law on Agency in Private Law Relations of an International Character (LUR)*. It is intended to submit this draft Convention to a diplomatic conference to be convened in the near future.

(e) *Draft Convention relating to a Uniform Law on the Form of Wills*. It is intended to submit this draft Convention to a diplomatic conference to be convened in the near future.

(f) *Study of the possibility of introducing the principles of the English trust system into legislations of countries other than common law countries—investment companies and unit trusts*. A study on the law relating to investment companies has been submitted to the EEC. Another study on investment companies in the member States of the Council of Europe is in progress and will be submitted to that organization.

(g) *Problems relating to security required of partnerships and co-operatives*. A study of these problems is in progress and will be submitted to the EEC.

(h) *Preliminary draft of a uniform law on the civil liability of motorists*. Work in progress.

B. LIST OF ITEMS ON WHICH THE INSTITUTE HAS BEEN WORKING IN THE PAST

(a) *Draft Uniform Law on Arbitration in Private Law Matters in International Relations (study commenced in 1929)*. The following conventions are based on, or are inspired by, this draft: European Convention of 21 April 1961 on International Commercial Arbitration (concluded under the auspices of ECE); European Convention Providing a Uniform Law on Arbitration (concluded under the auspices of the Council of Europe).

(b) *Draft Convention on the Recognition and Enforcement Abroad of Maintenance Obligations (study commenced in 1929)*. This draft Convention is at the basis of the United Nations Convention of 1956 on the Recovery Abroad of Maintenance and of The Hague Convention of 1956 on the Law applicable to Maintenance Obligations towards Minors.

(c) *Intellectual property (studies commenced in 1929)*

(i) *Preliminary draft Conventions for the Protection of Interpreting and Performing Artists, as well as of Manufacturers of Phonographic Records and other Phonograms; for the Protection of Radio Broadcasts; for the Protection of Press Information; and concerning the Right of Artists to a Percentage of the Proceeds in the case of Resale of their Work*. Within the general

framework of the relations of co-operation established since the foundation of the Institute with the International Bureau for the Protection of Literary and Artistic Property, these four drafts were prepared in collaboration with the International Bureau in 1939. The first and second preliminary drafts inspired the International Convention of 1961 for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations.

(ii) *Right of translators.* Work on this item was suspended in 1938.

(d) *Draft Uniform Law concerning the Liability of Innkeepers* (study commenced in 1932). Drafting completed in 1934. This draft is at the basis of the European Convention on the Liability of Hotel-Keepers concerning the Property of their Guests, concluded under the auspices of the Council of Europe.

(e) *Draft Uniform Law on Compulsory Insurance of Motorists.* Drafting completed in 1937. This draft is at the basis of the Benelux Treaty of 1955 on the Compulsory Insurance against Civil Liability in respect of Motor-Vehicles; and the European Convention on Compulsory Insurance of Motorists, concluded under the auspices of the Council of Europe.

(f) *Preliminary draft of a uniform law on the formation of international contracts by correspondence* (studies commenced in 1934). Drafting completed in 1936. This draft was later utilized in part during the elaboration of the draft uniform law on the Formation of Contracts for the International Sale of Goods.

(g) *Draft uniform rules applicable to international loans* (study commenced in 1935). Drafting completed in 1939. Draft submitted in 1946 to the ICC.

(h) *Study concerning the possibility of elaborating uniform provisions concerning documentary credits* (commenced in 1935). Work on this item was suspended in 1938.

(i) *Study concerning clearings in private law relations (inter alia, between the creditor-exporter and the debtor-importer) and the possibility of elaborating model regulations regarding clearings* (commenced in 1935). Work on this item was suspended in 1939.

(j) *Preliminary study on the legal status of women* (study commenced in 1938). Study carried out at the request of the League of Nations.

(k) *Study concerning insurance against major calamities* (study commenced in 1938). Study submitted in 1947 to the International Relief Union.

(l) *Comparative law study on joint-stock companies* (study commenced in 1947). Study submitted in 1951 to the ICC.

(m) *Preliminary draft Convention on Arbitration between Governments and Individuals* (study commenced in 1948). Work on this draft has been suspended for the time being.

(n) *Draft of an International Convention for the Protection of Cultural Property in Case of War* (study commenced in 1950). Drafting completed in 1951. This draft is at the basis of the UNESCO Convention of 1954 for the Protection of Cultural Property in the event of armed conflict, and Protocol.

(o) *Draft Convention on the Reciprocal Treatment of Nationals as between States* (study commenced in 1950). Drafting completed in 1951. This draft Convention is at the basis of the European Convention on Establishment, concluded in 1955 under the auspices of the Council of Europe.

(p) *Compilation of laws in force in ten immigration countries concerning the legal status of aliens* (42 volumes). Work carried out at the request of the Department of Social Affairs of the United Nations in 1953 and 1954 (cf. Report of the Secretary-General of the United Nations to the ninth session of the United Nations Assembly).

(q) *Compilation of international instruments concluded by ten immigration countries between themselves and with other countries of emigration concerning the legal status of aliens* (10 volumes). Work carried out at the request of the Department of Social Affairs of the United Nations in 1953 and 1954 (cf. report of the Secretary-General of the United Nations to the ninth session of the United Nations General Assembly).

(r) *Study on the possibility of establishing agreements concerning civil procedure between the member States of the*

Council of Europe (study commenced in 1950). Study submitted in 1951 to the Council of Europe.

(s) *Protection of employed drivers of motor vehicles against claims for civil liability* (study commenced in 1954). Study carried out at the request of the International Labour Organization and submitted in 1956 to the ILO.

(t) *Draft Convention on the Contract for the International Transport of Goods by Road* (study commenced in 1947). Drafting completed in 1952. This draft is at the basis of the Convention on the Contract for the International Carriage of Goods by Road (CMR), concluded under the auspices of ECE in 1956.

(u) *Draft Convention concerning Rights "in rem" in Inland Navigation Vessels (CRN)* (study commenced in 1957). Drafting completed in 1960. This draft is at the basis of Protocol No. I to the Convention on the Registration of Inland Navigation Vessels, opened for signature by ECE.

(v) *Draft Protocol on Attachment and Forced Sale of Inland Navigation Vessels (CSN)* (study commenced in 1956). Drafting completed in 1962. This draft is at the basis of Protocol No. II to the Convention on the Registration of Inland Navigation Vessels, opened for signature by ECE.

(w) *Restrictive trading practices* (study commenced in 1956). Work on this item has been suspended for the time being.

C. LIST OF INTER-GOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS WHICH TOOK PART IN THE THIRD MEETING ARRANGED BY THE INSTITUTE

1. Inter-governmental organizations

(a) *Specialized agencies of the United Nations*
International Labour Organisation
Food and Agriculture Organization
World Health Organization
World Meteorological Organization

(b) *Other Inter-governmental Organizations*
United International Bureaux for the Protection of Intellectual Property
The Hague Conference on Private International Law
The International Institute for the Unification of Private Law
The Central Office for International Railway Transport
The Organization for Economic Co-operation and Development

(c) *Regional inter-governmental organizations*
The Council of Europe
The Council of the European Communities
Commission of the Benelux European Economic Community
The European Conference of Ministers of Transport
The Nordic Council
The Danube Commission
The League of Arab States

2. Non-governmental organizations

The International Association of Legal Science
The International Social Security Association
The International Chamber of Commerce
The International Law Association
The International Road Transport Union

ANNEX III*

UNIDROIT: Table of legal activities on the programmes of certain international organizations as of 1 January 1966

[Original text: French]

* This annex is a reproduction of a publication issued by the International Institute for the Unification of Private Law. Although some of the activities described in this annex do not fall within the scope of the law of international trade, the Rome Institute's publication has been reproduced in its entirety because it contains information which may be relevant to the consideration of the item "Progressive development of the law of international trade" by the General Assembly.

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INTRODUCTION

1. As on the occasion of the first two Meetings,^a the organizations which participated in the IIIrd Meeting of Organizations Concerned with the Unification of Law (Rome, 2-4 October 1963) have recognized unanimously that one of the most effective means of preventing the overlapping and duplication of work, of co-ordinating their efforts and thereby of promoting a positive co-operation in the legal field, was to be found in these meetings being held at regular intervals in order to achieve a full and periodical exchange of information about their work in progress.

2. The purpose of the present publication, as of the previous ones,^b is to render more readily available to interested circles the information received from these organizations about their programme of work since the IIIrd Meeting. In view of the fact that the organizations have submitted their information in various ways, it is intended to send them on the occasion of the forthcoming IVth Meeting, which presumably will be held in 1967, a questionnaire which will permit the Institute to publish an up-dated Table setting out the programmes of work of these organizations in a more co-ordinated form which will make the Table easier to consult.

^a The 1st Meeting of Organizations Concerned with Unification of Law was held at Barcelona in 1956 and the IIInd Meeting at Rome in 1959. For the records and minutes of these meetings, see: for the 1st Meeting, *Unification of Law: Yearbook 1956*, vol. II éd. UNIDROIT, 1957; for the IIInd Meeting ID., *Yearbook 1959*, éd. UNIDROIT, 1960; for the IIIrd Meeting, ID., *Yearbook 1963*, éd. UNIDROIT, 1964.

^b See *Tableau des matières juridiques faisant l'objet des programmes de travail des organisations s'occupant de l'unification du droit* (Rome, Editions Unidroit, 1961), and *Tableau des matières qui font l'objet des programmes d'activités de certaines organisations internationales*, IIIrd Meeting, Rome 2-4 October 1963.

3. It should be pointed out that the information given in this document does not pretend to cover the working programme of all organizations concerned with the unification of law, but reproduces only the material received by the Institute from those organizations which have replied to its request.

A. THE UNITED NATIONS AND THE SPECIALIZED AGENCIES

1. *United Nations Economic Commission for Europe (ECE)*
By letter dated 22 March 1966, the Executive Secretary of the Economic Commission for Europe (ECE) has communicated to the Institute changes applicable to the Commission in the 1961 Table as amended in 1963, listing work undertaken since those dates.

In the light of this information, the 1961 Table has been revised as follows, in respect to the legal subjects included in the ECE's work programme.

1. *Law on mining and electric power*

A comparative study, by the Economic Commission for Europe, of the legal systems relating to undertakings engaged in the production, transmission and distribution of electricity and the legal conditions under which transfers across frontiers of electric power and natural gas can best be ensured.

2. *Arbitration*

Adoption, under the auspices of the Economic Commission for Europe, of the European Convention on International Commercial Arbitration (opened for signature on 21 April 1961, entered into force on 7 January 1964 and ratified by thirteen States on 1 January 1966) and of the Arbitration Rules, an optional instrument which is also concerned with international commercial arbitration and the application of which was made possible by the establishment on 18 October 1965 of the Special Committee provided for in the European Convention and by the designation of the national competent authorities (such authorities were designated by twenty-five States).

3. *Transport law*

(a) Conventions prepared in 1960-1965:

(i) World-wide:

Convention on Transit Trade of Land-Locked Countries;

(ii) Under the auspices of the Economic Commission for Europe, in co-operation with UNIDROIT:

Convention on the Registration of Inland Navigation Vessels and two protocols annexed to the Convention, on rights *in rem* and on attachment and forced sale of such vessels;

In co-operation with the International Labour Organisation:

European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR);

Agreement defining special equipment for the transport of perishable food-stuffs and the use of such equipment for the international transport of some of these food-stuffs.

(b) Conventions in the course of preparation:

Under the auspices of the Economic Commission for Europe:

Convention on the Measurement of Inland Navigation Vessels (intended as replacement for the 1925 Convention);

European agreement concerning the International Carriage of Dangerous Goods by Waterway (ADN).

In addition, the Economic Commission for Europe is continuing its work on bringing up to date the technical provisions of existing agreements, notably of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR).

(c) Subjects for future study:

The Economic Commission for Europe will consider: The possible amendment of the Convention on the Contract for the International Carriage of Goods by Road (CMR),

The desirability of resuming its work in co-operation with UNIDROIT on drafting conventions on:
Limitation of the liability of boat owners,
Contract for the international carriage of goods by waterway.

4. Law on sales

Work, under the auspices of the Economic Commission for Europe on the standardization of general conditions of sale for selected commodities.

5. Insurance and banking law

(a) The Economic Commission for Europe is now studying various problems relating to transport insurance law, particularly as regards trade relations between the Eastern European and the Western European countries, notably the possibility of standardizing the different national transport insurance policies, naturally in correlation with the international harmonization of various insurance laws.

(b) In its studies of transport insurance law, the Economic Commission for Europe may take up certain questions of banking law, in view of the bearing of insurance conditions on the opening of commercial credits.

(c) Other aspects of international banking law may be dealt with in the study on the simplification and standardization of external trade documents, also planned by the Economic Commission for Europe.

6. Patents and other means of protecting technical inventions

The Economic Commission for Europe has undertaken the study of certain international problems of industrial property, particularly as regards economic relations between countries with different economic structures.

2. International Labour Organisation (ILO)

Since the second Meeting of Organizations Concerned with the Unification of Law (Rome, 11-15 October 1959), the International Labour Conference has adopted various instruments, as follows:

43rd session (1959)

Conventions:

- Concerning the minimum age for admission to employment as fishermen;
- Concerning the medical examination of fishermen.

Recommendation:

- Concerning occupational health services in places of employment.

44th session (1960)

Convention:

- Concerning the protection of workers against ionizing radiations.

Recommendations:

- Concerning the protection of workers against ionizing radiations;
- Concerning consultation and co-operation between public authorities and employers' and workers' organizations at the industrial and national levels.

45th session (1961)

Convention:

- Concerning the partial revision of the Conventions adopted by the General Conference of the International Labour Organisation at its first thirty-two sessions for the purpose of standardizing the provisions regarding the preparation of reports by the Governing Bodies of the International Labour Office on the working of Conventions.

Recommendation:

- Concerning workers' housing.

46th session (1962)

Conventions:

- Concerning basic aims and standards of social policy;
- Concerning equality of treatment of nationals and non-nationals in social security.

Recommendations:

- Concerning vocational training;
- Concerning reduction of hours of work.

47th session (1963)

Convention:

- Concerning the guarding of machinery.

Recommendations:

- Concerning the guarding of machinery;
- Concerning termination of employment at the initiative of the employer.

48th session (1964)

Conventions and recommendations:

- Concerning hygiene in commerce and offices;
- Concerning benefits in the case of employment injury;
- Concerning employment policy.

49th session (1965)

Conventions:

- Concerning the minimum age for admission to employment underground in mines;
- Concerning medical examination of young persons for fitness for employment underground in mines.

Recommendations:

- Concerning the minimum age for admission to employment underground in mines;
- Concerning medical examination of young persons for fitness for employment underground in mines;
- Concerning the employment of women with family responsibilities.

Mention should also be made of the adoption by the Conference in 1964 of three amendments to the Constitution of the ILO. The first amendment abrogates article 35 of the Constitution, which deals with the application of conventions ratified by Member States in non-metropolitan territories for whose international relations they are responsible and adds a further paragraph to article 19. This new paragraph reads as follows: "With a view to promoting the universal application of Conventions to all peoples, including those who have not yet attained a full measure of self-government, and without prejudice to the self-governing powers of any territory, Members ratifying Conventions shall accept their provisions so far as practicable in respect of all territories for whose international relations they are responsible."

The two other amendments empower the Conference to suspend from participation in the International Labour Conference any member which has been found by the United Nations to be flagrantly and persistently pursuing by its legislation a declared policy of racial discrimination such as apartheid; and to expel or suspend from membership any member which has been expelled or suspended from membership of the United Nations.

These amendments take effect when ratified or accepted by two-thirds of the members of the ILO, including five of the ten members which are represented on the Governing Body as members of chief industrial importance.

The role of co-operatives in the economic and social development of developing countries was first discussed at the 49th session of the Conference (June 1965) and this question will be taken up again at the next session of the Conference (1966) with a view to the adoption of an appropriate instrument.

At this next session the Conference will also be called upon to discuss the following questions for the first time:

- Review of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age pensions, invalidity insurance and survivors' insurance;
- Certain problems relating to fishermen, viz.:
Accommodation on board fishing vessels;
Vocational training of fishermen;
Fishermen's certificates of competency;

(These questions have been included by the Governing Council in the agenda of the next Conference following the conclusions of a Preparatory Technical Conference on Fishermen's Questions, held at Geneva in October 1965.)

Grievance procedures and communications within the undertaking.

In addition to the normative activities of the International Labour Conference, the following may be mentioned:

The *European Social Charter*, prepared with the technical co-operation of the International Labour Organisation, was adopted in October 1961 by the States members of the Council of Europe.

The revised text of the 1950 Agreement concerning the *Social Security of Rhine Boatmen* was adopted on 13 February 1961, and the new amendment to the 1950 Agreement concerning the *Conditions of Employment of Rhine Boatmen* was unanimously adopted by the Special Tripartite Conference in May 1963.

In addition, the technical provisions of a *standard social security convention* between States, intended to promote the co-ordination of social security plans in Latin America, were adopted at the seventh session of the Inter-American Social Security Conference held in Paraguay (Asunción, May-June 1964).

3. Food and Agriculture Organization of the United Nations (FAO)

I. Food standards

Joint Food Standards Programme of FAO and WHO (World Health Organization).

The aim of this Programme is the establishment, and acceptance by States, on a regional or world-wide basis of standards which, after publication in a "Codex Alimentarius" could facilitate the unification of food laws. The work in this field covers the following subjects at the present time:

(a) Six general questions, including regulations governing the use of food additives which have been the subject of a joint FAO/WHO study since 1956;

(b) The standardization of twelve categories of products, including milk and milk products, which, since 1960, have been the subject of a Code of Principles of which four successive editions have already appeared.

II. Regulations governing products for use in agriculture

1. Study on regulations governing *pesticides*. (A model law is to be drawn up and published by FAO.)

2. Study on regulations governing the manufacture and sale of *animal feedstuffs* in Europe.

(This study appeared in 1963 and it is planned to publish an updated edition in 1968.)

III. Veterinary regulations

General study on regulations governing the *import and export of animals, animal products and other potential disease carriers*.

(A special study on regulations governing artificial insemination and international trade in animal semen is to appear shortly.)

IV. Regulations governing fisheries

Study on the standards and conditions governing the *handling, treatment, distribution and quality control of fish*.

(The study mentioned in item 6 of the previous edition of the table, namely that concerning the regulation of sardine fishing in the Mediterranean, is now completed.)

V. Conservation of natural resources (new activities)

1. Preliminary draft of an African convention on the *conservation and management of wild life and its environment*.

2. Study on legislation governing *hunting and the conservation of wild life in Africa*.

3. Study on legislation governing the *prevention of water-pollution*.

4. Study on legislation governing *national parks*.

4. United Nations Educational, Scientific and Cultural Organization (UNESCO)

Since the second Meeting (Rome, 11-15 October 1959), the General Conference has adopted the following texts:

At its eleventh session (1960)

Convention and Recommendation against *Discrimination in Education*;

Recommendation concerning the *most Effective Means of Rendering Museums Accessible to Everyone*.

At its twelfth session (1962)

Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of any Disputes which may arise between States Parties to the Convention against *Discrimination in Education*;

Recommendation concerning *Technical and Vocational Education*;

Recommendation concerning the *Safeguarding of the Beauty and Character of Landscapes and Sites*.

At its thirteenth session (1964)

Recommendation concerning the *International Standardization of Statistics relating to Book Production and Periodicals*;

Recommendation on the *Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property*.

In addition, on 26 October 1961, a diplomatic Conference, convened in conjunction with the International Labour Organisation and the International Union for the Protection of Literary and Artistic Works, adopted an International Convention for the *Protection of Performers, Producers of Phonograms and Broadcasting Organisations*.

At its thirteenth session, the General Conference also took action in connexion with the following:

The safeguarding of cultural property endangered by public and private engineering works:

This will be the subject of a recommendation which, it is anticipated, will be approved by the General Conference in 1966.

The status of teachers:

A draft recommendation concerning the professional, social and economic status of teachers has been drawn up in co-operation with the International Labour Organisation and will be submitted for adoption by a special inter-governmental conference to be convened in 1966.

Principles of international cultural co-operation:

A draft declaration of these principles is being prepared and will be submitted to the General Conference in 1966.

Finally, studies are in progress with a view to the possible drafting of international instruments concerning the *international standardization of library statistics*.

5. International Civil Aviation Organization (ICAO)^c

I. Conventions adopted after 1962:

Convention on offences and certain other acts committed on board aircraft, signed at Tokyo on 14 September 1963.

II. Questions in part A (current work of the present work programme of the Legal Committee):

1. Revision of the *Rome Convention (1952) on damage caused by foreign aircraft to third parties on the surface*. A sub-committee met in March 1965 to study this question. Another meeting is scheduled for March-April 1966.

2. *Liability of the air traffic control agencies*. A sub-committee of the Legal Committee studied this question in March-April 1964 and again in April 1965.

^c The list is divided in three parts which correspond respectively to the subjects already adopted through a Convention (I), those that are in the current work programme of the Legal Committee and are under study by the Committee itself or any of its Sub-Committees (Part A) (II) and, finally, those that have a lower priority (Part B of the work programme) and are not under study at present (III).

3. *Aerial collisions.* This was the main item considered by the Legal Committee during its session in Montreal in 1964. This question is not finalized yet.
 4. *Problems of nationality and registration of aircraft operated by international operating agencies.* Was studied by a sub-committee in July 1965. Another meeting will be held in 1966.
 5. *Resolution B of the Guadalajara Conference (1961): Legal problems affecting the regulation and enforcement of air safety which have been experienced by certain States when an aircraft registered in one State is operated by an operator belonging to another State.* A sub-committee dealt already with this question, which is still under study, in 1963.
 6. *Study of the possible revision of the limits of liability specified in the Warsaw Convention of 1929, as amended by the Hague Protocol of 1955.* As the result of recent developments, particularly the denunciation by the United States of the Warsaw Convention, and the request for an increase of the liability in force at present, the Council of ICAO has convened a special meeting to deal with this matter, which will be held in February 1966.
 7. *Legal status of aircraft:* Aspects other than those found in the Tokyo Convention. Though it is included in part A of work programme of the Legal Committee of ICAO, it has not been started yet.
- III. *Subjects on the work programme on which no work should be undertaken or directed by the Legal Committee, unless and until a report had been submitted to the Council by the Secretary-General or by the Chairman of the Legal Committee indicating the need for such work and Council had approved, or unless the Assembly or Council otherwise directed that active work should be undertaken:*
1. Study of a system of guarantees for the payment of compensation in pursuance of the Warsaw Convention.
 2. Study with a view to unifying the rules relating to procedure in cases arising under conventions on air law and of the rules of procedure applicable to the execution of judgements.
 3. Research in regard to measures for promoting the uniform interpretation of international private air law conventions and research, in regard to measures to be taken in order to ensure (a) the international authority of judgements by competent tribunals on convention in force on air matters and (b) the distribution and allocation of awards in pursuance of such conventions.
 4. Consideration of problems concerning assistance on sea and land and remuneration therefor.
 5. Resolution D of the Guadalajara Conference (News problems of private air law arising in connexion with the hire, charter and interchange of aircraft, particularly in relation to the liability of a person who makes available to another an aircraft without crew).
 6. *Legal Status of the Aircraft Commander.*
 7. Study of the possible revision of the limits of liability specified in the Warsaw Convention of 1929 as amended by the Hague Protocol of 1955.
 8. Study of a possible consolidation of international rules contained in the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome, 1952), the draft convention on aerial collisions and the subject of liability of air traffic control agencies.
 9. *Liability in respect of Nuclear Material in Relation to Civil Aviation.*

6. World Health Organization (WHO)

- I. *Legal matters which have been the subject of studies.*
 1. Publication of a new list of international biological standards.
 2. Revision of the international classification of diseases and causes of death.

II. Legal matters now under study

1. Study on the clinical and pharmacological evaluation of drugs.
2. Establishment of food standards (in co-operation with FAO).
3. Study with a view to the adoption by the various States of a common emblem for the purpose of protecting civilian medical personnel in time of conflict. (In co-operation with the World Medical Association, the International Committee of the Red Cross and the International Committee of Military Medicine and Pharmacy.)
4. Study on quality control of pharmaceutical preparations.
5. Study with a view to the improvement of legal provisions concerning the international control of narcotics.
6. International regulations governing the transport of corpses.

7. World Meteorological Organization (WMO)

The activities of WMO, even when they relate to the preparation of technical regulations to be applied by the member countries, are essentially technical. The texts of these regulations are in the form of operating standards to be applied to meteorological and hydrometeorological services and are not intended to be incorporated in national legislation; they may, however, be the subject of manuals or instructions to be used by the national services.

B. OTHER INTER-GOVERNMENTAL ORGANIZATIONS (a) UNIVERSAL ORGANIZATIONS

1. United International Bureaux for the Protection of Intellectual Property (BIRPI)

1. The United International Bureaux comprise the "International Bureau for the Protection of Industrial Property", established by the Paris Union Convention of 20 March 1883, and the "Office of the International Union for the Protection of Literary and Artistic Works", established by the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886.

The United International Bureaux administer the following Conventions and Agreements now in force:

- (1) Convention of the Paris Union for the Protection of Industrial Property of 20 March 1883, last revised at Lisbon on 31 October 1958;
- (2) Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, last revised at Brussels on 26 June 1948;
- (3) Agreement of Madrid for the International Registration of Trade Marks of 14 April 1891, last revised at Nice on 15 June 1957;
- (4) The Hague Agreement concerning the International Registration of Industrial Designs and Models of 6 November 1925, last revised at London on 2 June 1934 and supplemented by the Additional Act of Monaco of 18 November 1961;
- (5) Agreement of Madrid for the Prevention of False Indications of Origin on Goods of 14 April 1891, last revised at Lisbon on 31 October 1958;
- (6) Agreement of Nice concerning the International Classification of Goods and Services Covered by Trade Marks of 15 June 1957.
- (7) Agreement of Lisbon of 31 October 1958 concerning the protection of appellations of origin and their international registration.

In addition, the United International Bureaux constitute, with UNESCO and the International Labour Office, the secretariat of the Rome International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 26 October 1961.

2. The aim of all the Conventions and Agreements mentioned above is unification and harmonization of the law relating to intellectual property and copyright.

These diplomatic instruments have constituted all the countries which are parties to them into a Union for the Protection

of Intellectual Property and have thus created a genuine common body of law within the Union, to which the conferences for the revision of the Conventions and Agreements make such improvements as are considered feasible.

This body of law common to the Union is of course designed, so far as intellectual property is concerned, to replace the old system of settlement of conflicts of laws through the machinery of private international law and, ultimately, to abolish the conflicts of laws themselves; however, it is designed also, and primarily, to constitute a uniform international body of law applicable in each country both to nationals and to aliens, and this makes it a body of international law by reason, not of its purpose, but of its source, thus bringing it close to public international law. This effort at unification and harmonization is directed in the following three directions:

Firstly, on many points too numerous to detail in this brief note, they have established a *uniform status for patents, trade-marks, designs and models, indications of origin and copyright*.

Secondly, they have instituted *common international procedures for obtaining the protection of trade-marks and of designs and models*, which was the particular achievement of the Agreements of Madrid and The Hague mentioned in sub-paragraphs (3) and (4) above.

Lastly, on a plane which is technical rather than legal but which in a sense forms part of the infra-structure on which the further unification of the law can be based, a uniform international classification of goods and services covered by trade-marks was established by the Agreement of Nice, referred to in sub-paragraph (6) above, which the parties to that Agreement undertook to use as either the principal or the auxiliary system.

All the Conventions and Agreements are universal. Legislative unification is achieved through the drafting of the uniform legislation during the *travaux préparatoires* of the diplomatic Conference and its adoption by the Conference. Such improvements as are deemed possible are effected by the revising Conferences.

3. The tasks performed by the International Bureaux in recent years include the following:

I. *With respect to copyright*

- (a) African Study Meeting on Copyright, organized in collaboration with UNESCO (Brazzaville, 5-10 August 1963),
- (b) Meeting of an Expert Committee concerning the preparation of the Stockholm Conference to revise the Berne Convention for the Protection of Literary and Artistic Works (Geneva, 18-23 November 1963),
- (c) Meeting of the Permanent Committee of the Berne Union for the Protection of Literary and Artistic Works (New Delhi, 2-7 December 1963),
- (d) Meeting of an African Expert Committee to study a draft model copyright law (Geneva, 30 November-4 December 1964),
- (e) The draft model copyright law was completed and made available to newly independent countries interested in adopting legislation on the subject,
- (f) Meeting of the Permanent Committee of the Berne Union in Paris (November 1965).

II. *Industrial property*

- (a) African Study Meeting on Industrial Property at Brazzaville (August 1963),
- (b) Conference of Representatives of the Paris Union for the Protection of Industrial Property (Geneva, 30 September-2 October 1964),
- (c) Meeting of a Study Group on the Inventor's Certificate (Geneva, 27-30 January 1964),
- (d) Latin American Congress on Industrial Property (Bogota, 6-11 July 1964),
- (e) International Committee of Patent Offices for the Examination of Inventions (Geneva, 5-6 October 1964),
- (f) Expert Committee to study a draft model law on patents (Geneva, 19-23 October 1964),

- (g) The model law on patents was finalized and made available to newly independent countries interested in adopting legislation on the subject,
- (h) Session of the Expert Committee on Inventors' Certificates (Geneva, March 1965),
- (i) International Committee of Patent Offices for Effecting Preliminary Examination (Geneva, March 1965),
- (j) Session of the Expert Committee on the International Classification of Goods and Services (Geneva, May 1965),
- (k) *Ad Hoc* Committee of Directors of National Industrial Property Offices to draw up regulations under the Agreement of Madrid concerning the International Registration of Trade-Marks (Geneva, November 1965),
- (l) Asian Study Meeting on Industrial Property at Colombo (February 1966).

III. *Collaboration with the United Nations*

The United International Bureaux collaborate with the Secretariat of the United Nations in the field of industrial property. Such collaboration took place, in particular, in connexion with the preparation of the United Nations report *The Role of Patents in the Transfer of Technology to Developing Countries*.

The report was considered in New York at the third session of the Preparatory Committee for the United Nations Conference on Trade and Development (UNCTAD) and subsequently by UNCTAD itself at its Geneva session from 23 March to 16 June 1964. The United International Bureaux were represented by observers at both sessions. On the occasion of the UNCTAD session, the United International Bureaux prepared and distributed as a Conference document a note on "the role of patents in the transfer of technology to developing countries", and the Director of the United International Bureaux addressed the Third Committee, which had this item on its agenda. The Conference later adopted without dissent a recommendation that, *inter alia*, "competent international bodies, including United Nations bodies and the Bureaux of the International Union for the Protection of Industrial Property, should explore possibilities for adaptation of legislation concerning the transfer of industrial technology to developing countries...".

The United International Bureaux were also invited to be represented by observers at the thirty-seventh session of the Economic and Social Council of the United Nations, held at Geneva in July 1964, when the United Nations report was considered further. The representatives of the United International Bureaux addressed the Economic Committee. The Council adopted a resolution requesting the Secretary-General to take appropriate steps for the reciprocal exchange of information and documentation, and for reciprocal representation at meetings, between the competent international bodies, including United Nations bodies and the Bureaux of the International Union for the Protection of Industrial Property.

That resolution was one of the factors which led to the conclusion of a Working Agreement between the United International Bureaux and the United Nations. The formal terms of the Agreement are contained in an exchange of letters (dated 28 September and 2 October 1964) between the two secretariats. The Agreement provides, *inter alia*, for reciprocal representation by observers at meetings dealing with questions of industrial property.

General Assembly resolution 2091 (XX) includes the following:

"4. Requests that the competent international bodies, including United Nations bodies and the Bureau of the International Union for the Protection of Industrial Property, give particular attention to requests from Governments of developing countries for technical assistance in the field of industrial property legislation and administration."

IV. *The work programme of the United International Bureaux during the coming years includes the following:*

- (a) Preparation of the Conference to be held at Stockholm in 1967 to revise the Berne Convention for the Protection of

Literary and Artistic Works and preparation for the revision, in certain limited respects, of the *Paris Union Convention for the Protection of Industrial Property*. The Stockholm Conference will also be dealing with the question of revising the structure of the Unions administered by the United International Bureaux and the structure of the Bureaux themselves.

- (b) At a later stage, an over-all revision of the *Paris Union Convention for the Protection of Industrial Property* is scheduled.
- (c) A special agreement concerning a uniform classification of designs and models is also under study.
- (d) Model laws on trade-marks and on designs and models are at present under study.

V. The effort at unification accomplished by BIRPI does not relate only to the development of legislation common to the States parties to the conventions and agreements. It also aims at extending the territorial area to which such common legislation applies. In that connexion, an important result was obtained through the accession of the Soviet Union to the *Paris Union Convention for the Protection of Industrial Property*, which takes effect on 1 July 1965 and which means acceptance by that State of the provisions of the uniform body of law contained in the Convention.

The United International Bureaux has felt some concern at the setbacks which might be suffered in the work of unification achieved by the Convention and Agreements in the field of intellectual property as a result of decolonization and the accession of new States to independence. The uniform legislation which extended to the territory of the colonies by reason of the metropolitan country's membership in the Unions created by these diplomatic instruments would cease to have effect there, once the colonies became independent States, unless those independent States recognized the legislation and drafted their own individual laws. In order to ward off this danger, the United International Bureaux have, firstly, striven to have these new States accede to the Conventions and Agreements and considerable results have been obtained in this respect—and, secondly, with the collaboration of delegates from the new States, drafted model laws which, while they do not entirely achieve legislative unification owing to the fact that account must be taken, in some respect, of special conditions in the new States and as a consequence, provision must be made for some variants, nevertheless constitute a large step towards unification.

2. The Hague Conference on Private International Law

A. Activities already completed during the period from 1963 to 31 December 1965.

- (1) *Convention on jurisdiction, applicable law and recognition of decrees relating to adoption*, prepared during the tenth session (1964), signed 15 November 1965.
- (2) *Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters*, prepared at the tenth session (1964), signed on 15 November 1965.
- (3) *Convention on agreements for the choice of court*, prepared at the tenth session (1964), signed 25 November 1965.

B. Questions under study.

- (4) *The recognition and enforcement of foreign judgements concerning questions of inheritance* (work begun during the tenth session in 1964 and to be finished during an extraordinary session in 1966).
- (5) *Recognition and enforcement of foreign judgements concerning questions of divorce, legal separation and annulments of marriage* (for the moment the study is provisionally confined to divorce and separation).
- (6) *The assumption of jurisdiction and the applicable law in torts* (delicts and quasi-delicts).
- (7) *The protection of the individual and particularly of privacy and reputation in the international field.*

- (8) *Maintenance obligations* not yet governed by the 1956 and 1958 Conventions.

- (9) *The recognition of internal adoptions* granted by other States.

- (10) The revision of Chapter II concerning *letters rogatory* of the 1954 Convention on Civil Procedure.

- (11) The right of succession and especially the problems relating to the *administration of estates and to bona vacantia*.

- (12) The revision of the Convention for the settlement of *conflicting laws concerning marriage* of 12 June 1902.

- (13) *The recognition and enforcement of judgements rendered by a chosen court.*

3. International Institute for the Unification of Private Law (UNIDROIT) List of items on the working programme of the Institute (see annex II)

4. Central Office for International Railway Transport (COIRT)

A. Conventions adopted:

(a) The two international Conventions concerning the *international carriage of goods (CIM)* and of *passengers and luggage (CIV)* have been partially amended and adopted by the Sixth Revision Conference held at Berne from 20 to 25 February 1961. These two Conventions entered into force on 1 January 1965.

(b) Additional Convention to the Convention concerning the *carriage of passengers and luggage by rail (CIV)* on 25 February 1961, adopted on 26 February 1966 by the Extraordinary Conference held at Berne from 21 to 26 February 1966.

E. Work in progress

The Sixth Revision Conference instructed the Central Office:

(a) To study the problem of amending the structure of the CIM and CIV Conventions and to prepare a draft for the next ordinary revision conference;

(b) To continue its studies with a view to bringing more closely into line and perhaps later unifying the CIM and CIV Conventions and the Agreements on the international transport of passengers (SMPS) and of goods (SMGS) which are applied by the States of Eastern Europe and in Asia.

5. Organization for the Collaboration of Railways (OSShD) Conventions adopted:

Agreement concerning the international rail transport of goods (SMGS), entered into force on 1 January 1960;

Agreement concerning the international transport of passengers and luggage by rail (SMPS), entered into force on 1 June 1960.

These Agreements were revised in 1964 and 1965 and the new texts have been in force since 1 April 1966.

The Agreements mentioned make no provision for the procedure of ratification and they enter into force by decision of the Committee of the Organization for the Collaboration of Railways (OSJD), provided that none of the members of that organization raises any objection within two months from the date of the Committee's decision.

(b) REGIONAL ORGANIZATIONS

1. League of Arab States

A. Public law

- 1. *Treaty of joint defence and economic co-operation among the States of the Arab League* together with its military annex. Approved by the Council of the League on 13 April 1950.
- 2. *Convention on the privileges and immunities of the League of Arab States* together with its annex. Approved by the Council of the League on 10 May 1953.
- 3. *Cultural treaty*. Approved by the Council of the League on 27 November 1945.
- 4. *Agreement on the extradition of criminals*. Approved by the Council of the League on 14 September 1952.

5. Convention of the Arab Union for *wireless communications and telecommunications* with its annexes I, II and III. *Approved by the Council of the League on 9 April 1953. Various amendments have been successively approved. The last approval to date was on 12 June 1963.*
6. Convention of the Union concerning *Arab broadcast transmissions*. *Approved by the Council of the League on 15 October 1955. Its amendment was approved on 20 April 1965.*
7. Convention concerning *co-ordination of petroleum policy*. *Approved by the Economic Council on 13 March 1960.*
8. Convention on the *Pan-Arab Organization of Social Defence*. *Approved by the Council of the League on 10 April 1960.*
9. Convention on the *Pan-Arab Organization of Administrative Sciences*. *Approved by the Council of the League on 1 April 1961.*
10. Arab Cultural Unity Pact and Statutes of the Arab Organization for *Education, Culture and Science*. *Approved by the Council of the League on 21 May 1964.*
11. Convention organizing Arab co-operation for the use of *atomic energy for peaceful purposes*.
12. The basic Statute of the *Administrative Tribunal*. *Approved by the Council of the League on 31 March 1964.*
13. Partial unification of legal terminology.
Activities in progress
 1. Draft Statute of an Arab Court of Justice.
 2. Amendment of the Covenant of the League and of its regulations.*Projected activities on matters of public law*
 1. Unification of *technical terminology of administrative and financial law*.
 2. Unification of legislations.

B. Private Law

1. Convention on the *service of writs and letters rogatory*. *Approved by the Council of the League 14 September 1952.*
2. Convention on the *enforcement of judgements*. *Approved by the Council of the League on 14 September 1952.*
3. Convention on the *nationality of citizens of Arab States residing outside their country of origin*. *Approved by the Council of the League on 23 September 1952.*
4. Convention for the promotion of *commercial exchanges and the organization transit trade* among States of the Arab League and its annexes I and II. *Approved by the Council of the League on 7 September 1953.*
5. Agreement amending the Convention for the promotion of *commercial exchanges and the organization of transit trade* and its annexes I, II, III, IV. *Approved by the Council of the League on 15 December 1965.*
6. Agreement amending the Convention for the promotion of *commercial exchanges and the organization of transit trade* (and its annexes). *Approved by the Economic Council on 25 January 1956, 29 May 1957 and 14 January 1959.*
7. Protocol amending the tables annexed to the Convention for the promotion of *commercial exchanges and the organization of transit trade*. *Approved by the Economic Council on 13 March 1960.*
8. Convention on the settlement of current payments and the *transfer of capital* among the States of the Arab League. *Approved by the Council of the League on 7 September 1953.*
9. Agreement amending the Convention on the settlement of *current payments and the transfer of capital*. *Approved by the Economic Council on 15 December*

1954. The amended text has been approved by the same Council on 11 January 1959.

10. Nationality agreement. *Approved by the Council of the Arab League on 15 April 1954.*
11. Convention for the adoption of a unified table for the scale of *customs duties*. *Approved by the Economic Council on 25 January 1956.*
12. Founding Act of the *Potassium Company Limited*. *Approved by the Economic Council on 25 January 1956.*
13. Agreement for the establishment of the *Arab Financial Institution for Economic Development*. *Approved by the Economic Council on 3 June 1957.*
14. Protocol amending certain provisions of the Agreement for the establishment of the *Arab Financial Institution for Economic Development*. *Approved by the Economic Council on 3 June 1957.*
15. Convention on *economic unity*. *Approved by the Economic Council on 3 June 1957.*
16. The Arab Common Market. *Approved by the Council of Economic Unity on 13 August 1964.*
17. Convention establishing the *Arab World Airlines Organization*. *Approved by the Economic Council on 17 April 1961.*
18. Convention relating to the two freedoms, the first and second, for Arab Civil Aircraft. *Approved by the Council of the League on 25 March 1963.*
19. Convention establishing an Arab Maritime Navigation Company. *Approved by the Economic Council on 17 December 1963.*
20. Convention for the establishment of an Arab Petroleum Company. *Approved by the Economic Council on 17 December 1963.*
21. Protocol amending the Convention establishing an Arab Petroleum Company. *Approved by the Economic Council on 6 December 1964.*
22. The Arab Labour Charter and Statutes of the Arab Labour Organization. *Approved by the Council of the League on 21 March 1965.*
23. Unified laws for *boycotts, protection of literary and artistic property, bills of exchange and for the practice of pharmacy*.

Projects being carried out in the field of private law

1. Unification of legislations in Arab States particularly with regard to the *unification of the Civil Code, the Code of Civil Procedure and the Commercial Code*.
2. Unification of legal terminology.

2. Benelux

- (1) *Agreements signed and ratified during the years 1963, 1964 and 1965:*
 - (a) Treaty on the establishment and status of a *Benelux Court of Justice*. This treaty was signed by the three Governments on 31 March 1965 but has not yet been ratified;
 - (b) Benelux Convention on *Jurisdiction, Bankruptcy, the Execution of Judgements, Arbitral Awards and Official Documents*;
 - (c) Convention on *Extradition and Mutual Assistance in Criminal Matters*. (The two last-mentioned Conventions have already been ratified by two countries.)
- (2) *Drafts and questions under consideration at the governmental level:*
 - (a) Treaty on *Private International Law*;
 - (b) Treaty on *Compulsory Insurance against Civil Liability in respect of Motor Vehicles*;
 - (c) Standard law on *perjury before international judicial bodies*;
 - (d) *Fraud*;

- (e) *Protection of the name and emblem of the United Nations.*
- (3) *Drafts submitted to the Consultative Interparliamentary Council of Benelux:*
 - (a) *Contract of agency;*
 - (b) *Power of attorney;*
 - (c) *Enforcement of judicial decisions in criminal matters.*
- (4) *Matters under consideration in the Benelux Commission for the Unification of Law:*
 - (a) *Civil section:*
 - (1) *Sale;*
 - (2) *Astreinte (a daily fine imposed for delay in the fulfilment of a contract or the payment of a debt);*
 - (3) *Penalty clauses;*
 - (4) *Commorientes;*
 - (5) *Arbitration under private law;*
 - (6) *Transport insurance.*
 - (b) *Criminal section:*
 - (1) *Transfer of criminal proceedings;*
 - (2) *Applicability of criminal law in space.*

3. Council of Europe

- I. Since 1963, the following Conventions and Protocols have been open for signature by Member States:
 - Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality;*
 - Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions;*
 - Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending articles 29, 30 and 34 of the Convention;*
 - Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto;*
 - Convention on the Unification of Certain Points of Substantive Law on Patents for Invention;*
 - European Code of Social Security and Protocol to the European Code of Social Security;*
 - Protocol to the European Convention on the Equivalence of Diplomas Leading to Admission to Universities;*
 - Convention on the Elaboration of a European Pharmacopoeia;*
 - European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders;*
 - European Convention on the Punishment of Road Traffic Offences;*
 - European Agreement for the Prevention of Broadcasts Transmitted from outside National Territories;*
 - Protocol to the European Agreement on the Protection of Television Broadcasts.*
- II. The following Conventions and Protocols will be signed in the near future: *Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending articles 22 and 40 of the Convention;*
 - European Convention providing a Uniform Law on Arbitration;*
 - European Convention on the Establishment of Companies.*
- III. The following Conventions and Protocols are in preparation:
 - European Convention on Foreign Money Liabilities;*
 - European Convention on Consular Functions;*

European Convention on Information on Foreign Law;
European Convention on Lost or Stolen Bearer Securities;
European Convention on the International Transport of Livestock;
Protocol on the Recognition and Enforcement of Arbitral Awards;
Convention on the Adoption of Children;
Convention on the Repatriation of Minors;
Convention on the International Validity of Penal Sentences;
Convention on the Apportionment of Legislative and Judicial Jurisdiction in Criminal Matters;
European Agreement on the Education and Training of Nurses;
European Convention on Social Security for Aliens and Migrants.

- IV. The following subjects are included in the Council's programme of work in the matter of harmonizing national legislation:
 - Sale of corp real movable objects;*
 - Measures of conservation;*
 - Territorial extent of the consequences of bankruptcy;*
 - Trusts;*
 - Limited liability companies;*
 - Ways and means for a foreigner to institute proceedings against a State for damage committed by an official or an organ of that State;*
 - State immunity;*
 - Compulsory jurisdiction for civil actions against persons enjoying diplomatic immunity;*
 - Unification of rules on goods in bond and the responsibility of persons and institutions other than the transporter for the goods in their care during the execution of the transport contract;*
 - Unification of rules of contract governing the use of oil pipelines;*
 - European highway code;*
 - Exchange of information between Member States concerning their legislature activities in certain spheres of law;*
 - International exchange of draft legislation and regulations in matters relating to the punishment of offenders and to prisons;*
 - Basic juridical concepts;*
 - Place of payment of money liabilities;*
 - Elimination of the need for authentication of documents drawn up by consular or diplomatic officials;*
 - Abolition of visas for stateless persons;*
 - Privileges and immunities of international organizations and of persons assigned to them;*
 - Patents for invention;*
 - European dictionary of legal terminology;*
 - Wines and liquors;*
 - Harmonization of penalties relating to road traffic regulations (the initial phase calls for the study of minor and less serious offences);*
 - Uniform interpretation of treaties.*

4. European Economic Community (EEC)

- I. *Customs legislation, external trade*
 - Gradual establishment of common procedures for the administration of import quotas for goods entering the Community.*
 - Establishment of a common free list of imports from third countries.*
 - Definition of taxable weight; taxation of containers imported full; tariff treatment of goods reimported after further processing; taxation of small consignments at a flat rate of customs duty; date to be*

IV.

used for determining the rate of customs duties on goods declared for consumption; customs treatment of tools imported temporarily from one member State into another; definition of "normal residence" for the purpose of the application of the temporary import system to private road vehicles in relations between member States; reimbursement or remission of duties and charges on goods not released to the importer as being defective; customs treatment of teaching materials temporarily imported from one member State into another; small consignments exempted from customs duty.

Principle of and procedures for the commercial protection of EEC against abnormal practices by third countries; protection against dumping or the payment of bounties or subsidies by countries not members of EEC; common definition of the "Origin of goods"; active processing traffic.

Treatment of customs warehouses and free ports.

Customs clearance.

Gradual abolition of frontier controls (community transit).

II. *Free movement of workers*

Free movement of workers.

III. *Establishment and services*

1. *General*

Entry and residence.

2. *Access to and exercise of economic activities*

Artisan activities; industrial activities (e.g., pharmaceutical industry); trade (wholesale trade, e.g., in pharmaceutical products, and retail trade); middlemen; real estate; business services (publicity); persons in ancillary transportation occupations.

3. *Public labour markets*

Participation of businessmen in public labour markets.

4. *Banking and insurance*

Access to and exercise of the profession.

Banks and other financial institutions; life insurance; direct insurance.

Insurance contracts.

5. *Access to and exercise of the liberal professions*

Technical professions:

Architects; engineers; accountants; surveyors; agronomists.

Cultural professions:

Press; recreational activities.

Medical professions:

Doctors; pharmacists; veterinarians; dentists; opticians; paramedical activities.

Legal professions:

Lawyers; tax consultants; industrial property consultants.

6. *Cinema*

Free rendering of services in the film industry; film certificates of nationality.

7. *Guarantees required of companies*

Limited companies, private limited companies and share-partnership companies: publicity, validity of undertakings, nullity; matters not yet regulated by the first directive.

Co-operatives; other companies constituted under civil or commercial law; legal persons under public or private law.

IV. *Movement of capital*

Direct investments, transfers of capital, short and medium term credits, dealings in securities; modification of the above-mentioned directive; abolition of

discrimination in the issue and sale of foreign securities.

V. *Competition*

1. *Technical obstacles to trade* (motor vehicles and their trailers):

Directional signals; rear number-plates, trailers; approval; braking systems.

Suppression of radio interference; lighting and light-signalling equipment; permissible sound level; brakes for certain types of motor vehicles; safety glass.

Maximum designed speed and seating capacity of agricultural tractors, conveyor vehicles and loading surfaces; approval; braking systems; lighting and light-signalling equipment; protection of the power take-off.

Maximum dimensions, braking systems and lighting equipment of self-propelled harvester-threshers.

Measuring instruments; weights and weighing devices in the medium limit of error category; clinical thermometers; gas meters; liquidometers; measurement of grain weight in hectolitres; measurement of tanker capacity; pressure appliances subject to inspection; low-tension electrical installation equipment; domestic electrical appliances; fertilizers; rules for the construction and operation of oil pipelines; precious metals.

2. *Public contracts*

Procedures for awarding public contracts; procedures for awarding supply contracts.

3. *Pharmaceutical products*

Marketing of branded pharmaceuticals; supervision of branded pharmaceuticals; advertising with regard to branded pharmaceuticals.

Patentability of pharmaceutical products; use of colouring materials in pharmaceutical products.

Reciprocal recognition of licenses for sale.

4. *Price legislation*

5. *Water and air legislation*

6. *Energy legislation*

Stocking of petroleum products.

7. *Posts and telecommunications legislation*

Postal rates.

8. *Elimination or prevention of distortion of competition in special cases*

The legislation adopted by certain member States under articles 101 and 102 of the Treaty of Rome is indicated under this head.

9. *Economic criminal law*

Detection and punishment of infringements of the rules adopted by EEC.

Position under criminal law of civil servants of the European Communities.

10. *Industrial property*

European patent law; European organization to deal with industrial property; European trademark law; European law relating to drawings and models.

11. *Unfair competition*

12. *Company law*

Recognition of companies and legal persons; merger of companies governed by different domestic legal systems; maintenance of legal personality in case of transfer of head office from one country to another; European-type companies.

13. *Law relating to enforcement*

Jurisdiction of courts, recognition and enforcement of decisions in civil and commercial matters, enforcement of public documents; bankruptcy

law; jurisdiction of courts, recognition and enforcement of judicial decisions.

14. *Tax law* (for other tax measures, see under "Transport"):

Turnover taxes (introduction of the tax on value added); structure and application of the tax on value added.

Indirect taxes on accumulations of capital; on insurance contracts.

Elimination of double taxation; consumer taxes; direct taxes on business profits.

VI. *Social law*

(For other social-law measures see under "Transport")

1. *Conditions of work and pay*

Equality of pay for men and women; protection of young workers; maternal welfare.

2. *Social security*

Harmonization of social security systems; social security for migrant and frontier workers; social services for workers.

3. *Industrial safety* (accident prevention)

Stud drivers; metal scaffolding; cranes; hoists; transporters; portable electric tools; toxic substances.

4. *Industrial medicine*

Medical services at places of work; European list of occupational diseases.

Medical supervision of workers exposed to special hazards; work with compressed-air equipment.

5. *Vocational guidance*

Development of vocational guidance.

VII. *Agriculture*

1. *Legislation on foodstuffs*

Colouring materials; preservatives; criteria of purity for preservatives; antioxidants; criteria of purity for antioxidants; emulsifiers and stabilizers; cocoa and chocolate; jams, marmalades, fruit jellies and chestnut purée; labelling and packaging; preserves; food extracts, broths and soups; macaroni, spaghetti and similar products; flours, cereal groats and cereal meal, milk products; fruit juices, definition of wines, methods of analysis and evaluation of wines, oenological practices; pesticide residues in foodstuffs and agricultural products.

2. *Veterinary legislation*

Health requirements for intra-Community trade in animals of the bovine species and swine.

Health problems involved in trade in fresh meats, fresh poultry and meat-based products; health problems concerning fresh meats and animals of the bovine species and swine imported from third countries; expert opinions on intra-Community trade in fresh meats and animals of the bovine species and swine; expert opinions on the approval of slaughter-houses and cutting shops for intra-Community trade in fresh meats.

Use of auxiliary staff for the inspection of poultry and poultry meats.

Boned and pre-packed meats.

Health measures, prevention of tuberculosis and brucellosis, methods of diagnosis.

3. *Forestry legislation*

Measurement and classification of wood in the rough.

4. *Legislation governing plants and seedlings*

Marketing of beetroot seeds, fodder seed, cereal seeds, potato seedlings and forest reproduction materials.

Establishment of a standing committee on agricultural, horticultural and forest plants and seedlings; marketing of vegetable seeds; vine propagation materials.

EEC catalogue of varieties of species of agricultural plants.

5. *Legislation governing plant health*

Measures to prevent the introduction of harmful organisms in plants; control of verrucose gall; marketing of phyto-pharmaceutical products.

6. *Legislation governing animal foodstuffs*

Additives in animal feeding.

Analysis and sampling methods for the supervision of animal foodstuffs.

Definition of simple and compound foods.

VIII. *Transport*

Certain provisions affecting competition in transport by rail, road and inland waterway.

Weights, dimensions and technical requirements for commercial road vehicles operating between member States.

System of bracket ("fork") rates applicable to the transport of goods by rail, road and inland waterway.

Licensing for the transport of goods by road between member States.

Community quota for the transport of goods by road within the Community.

International transport of passengers by road.

Abolition of double taxation of motor cars in international transport.

Duty-free entry of fuel contained in the tanks of utility vehicles and vessels used in inland navigation.

Standardization of the basis for calculating the tax on vehicles and vessels used in inland navigation.

Methods of compensating for certain passenger transport charges.

Financial relations between the railroads and the States and standardization of the accounts of railroads.

Working conditions in the three methods of transport.

Individual log for recording whether the provisions governing hours worked in transport by road and inland waterway have been complied with.

5. *Danube Commission*

1. Study, at meetings of experts from all the Danube countries, of the provisions of the European Code for Inland Waterways (CEVNI) with a view to the formulation of *new basic provisions relating to navigation on the Danube*.

2. Study, at meetings of experts from the Danube countries, of radio-communication questions, with a view to the formulation of recommendations on the *unification of radio-communications for navigation on the Danube*. This unification is to be effected in accordance with the International Telecommunication Convention.

3. Work by a group of experts from the Danube countries on the preparation of *new draft recommendations on the co-ordination of hydro-meteorological observations and of the hydro-meteorological service on the Danube*.

C. NON-GOVERNMENTAL ORGANIZATIONS

1. *International Law Association (ILA)*

The 51st Conference, held in Tokyo in 1964, discussed the following subjects:

1. *The Legal Aspects of the Problem of Asylum*: The Committee was requested to prepare draft rules on territorial and diplomatic asylum.

2. *The Charter of the United Nations*: The Compulsory Jurisdiction of the International Court of Justice.

3. *Juridical Aspects of Peaceful Co-existence*: The Rapporteur submitted a list of principles or rules of Peaceful Co-existence. The Conference took note of this report "without prejudging the issue of the definitive character of this list of principles contained therein or the question whether these principles shall be deemed to be juridical principles of co-existence or principles of international law".

4. *Recognition and Enforcement of Foreign Money-Judgments*: The text of a Model Act was approved. This text is given on pages 7-13 of the brochure containing the Tokyo Conference Resolutions.

5. *Family Relations*: Adoption of Children.

6. *International Medical Law*: The diffusion and application of the Geneva Conventions of 1949.

7. *The Extra-territorial Application of Restrictive Trade Legislation (including Anti-Trust Legislation)*: The Committee report dealt with the following matters:

- (a) The International Law governing Anti-Trust Jurisdiction.
- (b) The Extra-territorial Application of Restrictive Trade Legislation—Jurisdiction and International Law (with summary of such legislation).
- (c) The Range of Effect of the Anti-Trust Laws of the United States of America.
- (d) The Harmonization of Laws and the Development of Principles for the Resolution of Conflicts of Enforcement Jurisdiction; limitations on the exercise of Enforcement Jurisdiction.

The Conference affirmed that the actions of States in this field are subject to rules of international law and that, in practice, possible conflicts between States in this field can be eliminated, reduced or resolved.

8. *Uses of the Water of International Rivers*: The following matters were discussed:

- (a) Settlement of Disputes: Procedural Rules.
- (b) Navigational Uses: Draft Articles concerning Navigation.
- (c) Pollution of Waters Disputes of a Drainage Basin.

9. *Space Law*: The following matters were discussed:

- (a) A legal régime for outer space.
- (b) The upper limit of national space.
- (c) The legal status of space vehicles of international organizations.
- (d) The liability for damage caused by space vehicles.
- (e) Assistance to, and return of, astronauts and space vehicles.
- (f) An international space agency.
- (g) Telecommunication satellite problems.

10. *International Commercial Arbitration*: The Chairman of this Committee submitted a progress-report on "Arbitration between government-controlled bodies and foreign business firms".

Current Studies of the International Committee

(Helsinki Conference: 14-20 August 1966)

International Commercial Arbitration

The various legal aspects of arbitration between government-controlled bodies and foreign business firms.

Charter of the United Nations

The Changing Role of Arbitration in the Settlement of Disputes between States.

International Security and Co-operation

The legal aspects of Disarmament.

Family Relations

Matrimonial Property Relations.

International Medical Law

The Application of the Geneva Conventions.

The "secret médical", i.e., professional secrecy.

A plan for the study of International Medical Law.

Legal Aspects of the Problem of Asylum

Draft rules on territorial and diplomatic asylum: preparation of a preliminary progress report.

Uses of the Waters of International Rivers

The equitable sharing of uses.

Succession of New States to the Treaties... of their Predecessors

Various developments in this field since the publication of "The Effect of Independence on Treaties" (Stevens-Rothman, 1965).

International Trade Marks

Criminal Remedies in relation to Trade Marks and Unfair Competition.

Human Rights

The implementation of Human Rights (progress report).

Extra-territorial Application of Restrictive Trade Legislation

1. Completing and maintaining the factual material given in the Committee Report to the Tokyo Conference: shipping conferences; cartel policy of the EEC; litigation in the USA, etc.
2. Formulation of rules of international law in this field.
3. Reduction and resolution of conflicts of jurisdiction.

International Trade and Investment

1. *Taxation*: Double taxation and other measures adversely affecting international trade.
2. *Discrimination*:
 - (a) Non-tariff discrimination in the international movement of goods (quotas, licences, etc.).
 - (b) Discrimination in international transport (cargo preferences, conference schedules, etc.).

Air Law

Nationality and Registration of Aircraft with special reference to Article 77 of the Chicago Convention.

Space Law

1. The legal value of principles 2 and 3 of resolution 1962 (XVIII) adopted at the eighteenth session of the General Assembly of the United Nations; Freedom of access to outer space and celestial bodies.
2. Communication satellites.
3. Legal status of space craft.

Air and Space Law (joint session)

1. Delimitation of air space.
2. Liability for damage caused by aircraft and space craft.

International Monetary Law

1. Current payments and capital payments.
2. Nominalism and guarantee clauses in public international law.
3. Rules of customary public international law in monetary questions: (a) guarantee clauses in private contracts; (b) monetary operations (devaluations and revaluations).

2. International Road Transport Union (IRU)

1. Studies designed to improve customs, fiscal and social legislation governing international road traffic.
2. Problems concerning the implementation of bilateral and multilateral agreements in the international carriage of passengers and goods by road.
3. Problems connected with the simplification and standardization of transport documents.
4. Problems and utilization of the international consignment note in accordance with the Convention on the Contract for the International Carriage of Goods by Road (CMR).

5. Application of the TIR Convention in Europe following the conclusion of an international insurance contract.
6. Co-operation in the preparation of the Draft Convention on the Contract for the International Carriage of Passengers and Luggage by Road.
7. Regulations governing the carriage of perishable foodstuffs, dangerous goods and nuclear materials.
8. International standardization of the maximum standards for commercial vehicles.
9. Memorandum on general transport policy and its consequences (1963).
10. Observations on infra-structure policy (1964).

DOCUMENT A/6396/ADD.1

[Original text: English]
[1 November 1966]

Pursuant to paragraph 7 of the report of the Secretary-General (A/6396), the comments received from the secretariats of the International Institute for the Unification of Private Law and of The Hague Conference on Private International Law are reproduced below.

A. INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

29 July 1966

...

1. The comments made below are those of the secretariat of the Institute and do not necessarily reflect the views of the Institute's Governing Council and General Assembly. It may however be pointed out that both these organs⁹⁰ have welcomed the interest taken by the United Nations General Assembly in the unification and harmonization of the law of international trade, at the same time stressing the desirability of establishing a closer relationship between the Institute and the United Nations with the object of ensuring a more active collaboration between the two organizations and avoiding a duplication of efforts and overlapping of activities. The Institute's General Assembly has included this question of relationship in the agenda of its next session, when it will examine the various possibilities existing in this respect on the basis of a report to be submitted to it by an *ad hoc* committee set up specially for this purpose. Since precise proposals and suggestions on co-operation and co-ordination with the United Nations will in due course be put forward by the Institute to the appropriate United Nations organs, we will make only certain practical suggestions which could facilitate the work of the United Nations Commission on international Trade Law when the proposals contained in the Secretary-General's draft report have been adopted and implemented.

...

2. The draft report contains, in our view, a clear and comprehensive survey of the work achieved or still in progress in the field of unification of the law of international trade and of the various problems involved, and our observations may therefore be limited to a few specific points.

(a) *Similarity of the law of international trade-autonomy of the parties' will*

3. The extent to which international unification in a

⁹⁰ The Governing Council at its forty-fifth session (12-14 April 1966); the General Assembly at its sixteenth session (15 July 1966).

given branch of law can be achieved and its chances of success depend, generally speaking, on two major factors:

- (i) The practical interest which the settlement of international relations in that branch of the law presents; and
- (ii) The degree of similarity existing in that branch between the various national legal systems to be unified or harmonized.

4. As to (i), the need to simplify and facilitate international commercial relations by means of unifying the relevant laws or practice has long been recognized. It is in the field of commercial law and allied matters that substantial results have been, and can further be, obtained. The United Nations General Assembly resolution 2102 (XX) is further evidence of this need and of the priority that should be given to it.

5. As to (ii), the draft report rightly stresses the fact that there exists a "universal similarity of the law of international trade". We feel, however, that this affirmation should be made subject to certain limitations. Whilst an identity between certain basic concepts underlying the law of international trade⁹¹ of various countries can be said to exist at least sufficiently strong to warrant an attempt at their harmonization or unification, significant divergencies nevertheless remain and should not be under-estimated. One should not forget that commercial usages, both general and local, often prevail over the law. The autonomy of the will of the parties does not always operate in favour of unification and can even represent a cause of divergencies. Moreover, one should not in our view, attribute to the principle of the autonomy of the will of the parties the same importance which it undoubtedly had in the past as a unifying element. The general tendency of legislators nowadays is to restrict the individualistic and liberal conception of trade, developed in the last century, which is still to some extent reflected in the laws of many countries. The law of trade and commerce is no longer conceived as governing solely relations between trade operators but account is more and more taken of the direct and indirect interests of third persons, e.g. of users or consumers. It must be stressed that the evolution of commercial law and allied matters is towards a social concept and away from the so-called professional concept of which the autonomy of the parties' will is perhaps the foremost expression. This tendency will no doubt grow stronger when the efforts to achieve the necessary measure of unification are pursued jointly by countries of different economic structures (such as socialist and non-socialist countries, industrially developed countries and developing countries). Any realistic attempt at unification must take account of this new development.

6. To sum up, the main problem and the main challenge facing formulating agencies is to prevent a too strong influence of sectional interests and to reconcile on the one hand, the duty of the State to protect, by means of coercive rules, the community as a whole

⁹¹ The expression "law of international trade" is taken here in the sense given to it in paragraph 6 of the draft report [see paragraph 10 of the final text in document A/6396] i.e. "the body of rules governing commercial relationships of a private law nature involving different countries". We need not stress the fact that the law of most countries does not distinguish between "internal trade" and "international trade" and that it is therefore often left to international conventions to deal with the international relations aspect.

and, on the other hand, to maintain a certain flexibility and the adaptability necessary for commercial transactions.

7. It is not unlikely that in drafting uniform rules the need will be felt to resort to rules of a compulsory character whose object is to ensure a fair balance of equities as between parties affected by such rules. As regards other clauses of the uniform law which have been drafted with the sole purpose of supplying business circles with convenient formulae to arrange their own transactions, such clauses may be left to the free will of the contracting parties.

(b) *Uniformity of interpretation*

8. There is one further aspect of the work of unification which, in our opinion, merits special attention. No work on the unification of law is complete without a study of the means of avoiding divergent interpretation and application of uniform texts. The Institute has carried out detailed research in this respect and will willingly put its studies and conclusions at the disposal of the United Nations.

(c) *Role of the United Nations*

9. We note with satisfaction the view expressed in the draft report that an active United Nations participation in the work of harmonization and unification of the law of international trade should not diminish the activities and usefulness of existing formulating agencies but rather enhance them.

10. It would appear that the role of the United Nations in the field of unification of law of international trade is radically different from their role in the field of codification of public international law. In this latter field, the United Nations are acting as the only inter-governmental organization, through the International Law Commission. This is made possible by the fact that there exists no other inter-governmental organization specialized in this particular field and that public international law, owing to the fact that it is not normally incorporated in the national law, would seem a more suitable subject for codification. The position with regard to commercial law is somewhat different in that the degree of specialization in this branch of the law is extremely high; a great number of organizations, governmental and non-governmental, have been operating for many years each in its own field of specialization.

11. It would, in our view, be unreasonable, if not impossible, to concentrate all such activities within one single agency. The only practical way of proceeding in this field is, it would appear, that of collaboration and co-operation between the various specialized bodies under the aegis of the United Nations.

12. It is respectfully submitted that, in order to achieve this objective, the primary task of the United Nations commission on international trade law, whose establishment we welcome, should therefore be one of co-ordination and supervision. It is realized that, in so far as the functions of the proposed commission are concerned, its terms of reference should be flexible so as not to hamper its activities unduly. It is consequently desirable that the proposed commission should be able to act as a formulating agency. However, this may well have the effect of diminishing the traditional

role of existing formulating agencies and it is therefore hoped that the proposed commission will carry out its task with due regard to the activities of these agencies and in full consultation with them.

13. We are of the opinion that the activities of the proposed commission as a formulating agency should in general terms, be limited to:

- (i) Exploring the possibility and desirability of unification on a world level in certain branches of law, by utilizing the wide network of relations existing between the United Nations Secretariat and Member States;
- (ii) Co-ordinating unificatory activities on a world level with certain unificatory activities of a regional character, in order to avoid overlapping;
- (iii) Formulating the guiding lines which should underlie the draft Convention or model laws that are included in the programmes of work of existing agencies;
- (iv) Reviewing such drafts on United Nations level with a view to submitting them to the Member Governments for adoption.

14. We should like to quote here the view expressed by an eminent scholar, the late Professor H. C. Gutteridge, with regard to the future of the unifying process:

"The most urgent problem of all... is that of the waste of effort and confusion that has, at times, been caused by the existence of competing agencies in the work of unification. The remedy for this state of affairs would seem to lie in the establishment of a rallying ground for unificatory activities—a kind of international clearing house—which would co-ordinate and supervise activities of this nature and also facilitate the collection of any information that may be required, either from governmental or other sources. It is not necessary that an authority of this kind should itself undertake the work of drafting the uniform laws. This could, as was done in the past by the League of Nations, be delegated by it to the appropriate bodies.... The exercise of these co-ordinating and supervisory functions would appear to be a task falling within the province of the Economic and Social Council established under the provisions of the Charter of the United Nations".⁹²

15. We further express the hope that it will prove possible to associate existing agencies with the formulating activities of the proposed commission by inviting them to send observers to meetings which deal with matters falling within their special competence and to submit comments on texts finalized by the commission.

16. With a view to facilitating co-ordination, the Institute ventures to submit for consideration by the United Nations the following practical suggestion: that the main seat of business of the proposed commission should be on the premises of the Institute. An informal link would thus be established between the two organizations, each retaining its complete independence. This would permit the commission to utilize the facilities of the Institute, in particular its specialized library which has been built up at great costs over a period of forty years.

⁹² See H. C. Gutteridge, *Comparative Law*, 2nd ed. (Cambridge, University Press, 1949), pp. 183-184.

17. It would seem that such an informal link is justified by the fact that the Institute can be considered as the only intergovernmental organization of a universal character whose principal statutory aim is the unification of private law. Furthermore, the main part of the Institute's efforts have been, and still are, devoted to the unification and harmonization of commercial law. The work of the commission will thus, in many respects, be identical to that of the Institute. A close collaboration from the outset, on the lines suggested above, would therefore in our view be desirable.

B. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

2 August 1966

1. The initiative taken by the Hungarian delegation at the nineteenth session of the General Assembly with a view to inducing the United Nations to take an active interest in the "unification of private law" in matters of commerce must be warmly welcomed by all those who are convinced of the importance of harmonization of law in this field. It may well be that the interest taken by the United Nations in this sphere will give a new impetus to the activities pursued in other organizations. There is certainly a great need to accelerate the development of this work. For it is quite clear that unification in this field should not be delayed too long, if it is desired to avoid the risk of having individual countries proceed to legislative measures on an autonomous basis. It can therefore be said that now is the time that activities undertaken in this direction may have the greatest impact on the developing systems of the newly established nations. It is these States which will probably be able to achieve, by taking a full part in these activities, a far-reaching harmonization of their respective legal systems.

2. The Hague Conference has now been in existence for more than seventy years and is therefore fully conversant with the technical, methodological and organizational problems attendant upon the unification or codification of private international law. Its permanent organization, in existence since a more recent date (1955), is now well-established and enjoys recognition in many countries besides its twenty-three member States. That is why it feels confident that it has a real contribution to make to the attainment of the objectives outlined in the Hungarian proposal, and is fully conscious of its duty to enable non-member States to benefit from such experience and technical know-how as it has acquired during the last decades.

3. At the same time it might well happen that, if certain of the treaties elaborated by the Hague Conference in the field of commercial law were made more widely known, certain States would accede to them or a great number of States would declare themselves in agreement with the cardinal principles embodied in them. This is particularly the case as regards the Convention relating to the international sale of goods, which resolves in a simple and easily understood manner the conflicts of law in that field. This Convention might prove particularly satisfactory to those States which feel that they cannot, or cannot as yet, adopt the Uniform Law on the Sale of Goods, and also, of course, to those States which, while adhering to the 1964 Conventions, wish to find a satisfactory solution for their relations with States that are not contracting parties to the said Conventions.

4. The paramount importance of sound co-ordination in this field is self-evident. Consequently, sound lines

of communication should be created between the United Nations and other international organizations active in this field. Such measures should be taken, firstly, so as to feed the United Nations with the necessary information on what is happening in other centres and, secondly, so as to avoid a collision or overlapping of the activities being undertaken.⁹³

5. Clearly, there will have to be within the United Nations some sort of office or organ to receive information and to act as a clearing-house for any projects that may be announced.⁹⁴

6. It seems that some sort of commission—supported by a secretariat—would be the best form to choose for this, although it is hard to see whether this commission—the report cites the example of the Committee on Housing, Building and Planning—is intended to take policy decisions only on whether it should itself adopt a formulating function. As the difference between these two activities is considerable, the General Assembly might usefully go rather more deeply into this question. The solution might also have a bearing on the kind of "governmental" experts to be designated to sit on such a commission.

7. On former occasions, the Hague Conference has expressed its conviction that work of this kind, in which scholarship is a vital and pervasive element, can best be pursued outside the larger political centres of the world. Even though the results must of course be acceptable to Governments and parliaments which are political bodies with political responsibilities, a text whose groundwork had not been elaborated by men of scholarship might easily suffer from the fact that it was based upon expediency rather than on the best available legal insight, and this even to the point of lacking the essential quality of legislation: solidity.

8. Moreover, whatever form be chosen for the commission, the task to be conferred on its secretariat is considerable, and, as experience shows, it will tend to become increasingly important with the passage of time.

9. However, it would be wrong to imagine that effective codification can be accelerated by creating a certain number of new international organizations. As far at least as codification by treaties is concerned, no results will be forthcoming so long as signatures and ratifications are slow in materializing. The principal bottle-neck is caused not by the organizations themselves but by the scarcity of qualified personnel within the national administrations and parliaments able to devote their limited amount of time to the preparation and adoption of laws approving international conventions. It appears that most national administrations do not have the amount of staff necessary to keep abreast of fast-moving developments at the international level. If participating Governments seriously wish to make greater headway in this respect, it is felt that they

⁹³ It may be useful to stress here, in passing, that the unification of law need not be regarded in itself as being of necessity contradictory to the unification or harmonization of rules governing conflicts of law: in general, the former takes more time than the latter, and even after the formulation of a uniform law on a given subject certain States may not wish to apply the uniform law to commercial relations with States which, for reasons that can be respected, prefer not to subscribe to the uniform law.

⁹⁴ Attention should be drawn, however, to the important initiative of UNIDROIT in convening the famous "Rencontres" (Barcelona 1956, Rome 1959, Rome 1963), which already constitutes the first step in a direction in which other highly useful developments can be expected.

should endeavour to obtain from their respective parliaments sufficient funds to expand substantially the government offices dealing with the ratification of treaties dealing with matters of law.

10. An important element in the new setup will be the form of collaboration with existing international organizations.

11. The Hague Conference proceeded, in 1958, to an exchange of letters with the United Nations in virtue of Economic and Social Council resolution 678 (XXVI) of 3 July 1958. So far, mutual collaboration has been limited to the occasional exchange of information. Therefore, when action is taken by the United Nations on the Hungarian proposal, it might prove an opportune moment to give more substance to this relationship. It would seem that, generally speaking, the work of the projected commission would benefit if provision were made for the representation of existing international organizations active in the field of unification of commercial law. Here, the example set by the Council of Europe in respect of the Committee for Legal Co-operation could usefully be followed. A distinction is made there between organizations permanently represented by reason of their standing interest in the international codification of private law (UNIDROIT, Hague Conference) and others which are invited to participate only when a subject with which they are actually concerned is brought up for discussion.

12. In those cases, however, where the United Nations does not itself wish to undertake the task of formulation, the advantage of having recourse to existing organizations is self-evident. At this point the special position of UNIDROIT should be mentioned. More specifically because this organization does not as a rule itself convene diplomatic conferences, it seems ideally placed to perform the task of formulating—on the basis of the latest developments in the field of legal science—drafts which are capable of serving as a starting-point for final discussions at diplomatic level held at a meeting under the auspices of the United Nations.

13. Although the Hungarian proposal (explicitly) and the report (implicitly) do not consider the unification of conflicts law as a primary objective, it might well happen that in a given case, the experts on the commission would perceive that the matter in hand was not yet ripe for codification in the sphere of uniform substantive law, and that this might lead them to conclude that a solution at the level of conflicts of law would probably enjoy a greater chance of success. Then would be the moment to give effect to what was agreed in the exchange of letters dated 5/10 November 1958, where it was stated that "similarly, the Secretary-General of the United Nations may wish to suggest items for consideration by the Hague Conference and will transmit such suggestions to the Secretary-General of the Conference for such action as he may deem advisable".

14. It would be premature at this stage to emit an opinion on the form the activities of the Conference should take when it had received such a request. The statutes of the Conference provide for the convening of extraordinary sessions. The statutes themselves accept as the sole criterion of a State's eligibility to be proposed as a member participating in its work—apart from a majority vote—that such participation should present an interest of a juristic kind (*intérêt de nature juridique*). It should be possible to find a solution whereby States wishing to take an active part in the

drafting without actually applying for membership of the Conference are allowed to participate in such extraordinary sessions.

15. Summing up briefly, we should like to underscore the following points:

(a) The Hungarian proposal should be welcomed;

(b) The new organs to be created within the United Nations should provide for intimate contacts of a permanent character with existing organizations that have been specially created to be active in this field;

(c) Existing organizations could make a useful contribution to the interests which the United Nations is about to promote.

DOCUMENT A/6396/ADD.2

[Original text: English and French]
[25 November 1966]

With reference to paragraphs 147-166 of the report of the Secretary-General (A/6396) describing the activities of the International Chamber of Commerce in the field of harmonization and unification of the law of international trade, the Council of the International Chamber of Commerce at its 108th session held in Paris on 15 and 16 November 1966 adopted unanimously a resolution, the text of which is reproduced below.

"The International Chamber of Commerce,

"Taking cognizance of the report on 'The Progressive Development of the Law of International Trade' submitted to the twenty-first session of the United Nations General Assembly, in accordance with the terms of resolution 2102 (XX) adopted by it on 20 December 1965;

"Noting that this report suggests the creation of a commission on international trade law whose object would be, among others, to co-ordinate the work of different organizations active in this field, to prepare, and promote the adoption of, new international conventions, model and uniform laws, and the codification and wider acceptance of international trade terms, provisions, customs and practices,

"Observing with satisfaction that the report, in its description of the activities and methods of the above-mentioned organizations, recognizes the importance of the ICC's own action toward progressive development of international trade law and thus reflects the extent to which its contribution has been welcomed,

"Considering that the work already accomplished by the International Chamber of Commerce enables it to make a constructive contribution in the field of the development of international trade law and convinced that this is a sector in which businessmen are particularly competent, given their daily experience of these questions.

"Recalling that such institutions as the Economic and Social Council of the United Nations, and the Trade and Development Board of the United Nations Conference on Trade and Development have been anxious to assure themselves, through appropriate procedure, of the co-operation of the business community,

"Expresses the wish that, should the General Assembly establish a commission on international trade law, the procedural rules of this new body will be such as to associate the business community represented by the ICC on a world-wide scale with the commission's work on a consultative basis."

DOCUMENT A/C.5/1107

Financial implications of the draft resolution submitted by the Sixth Committee in document A/6594
Note by the Secretary-General

[Original text: English]
[15 December 1966]

1. Under the terms of the draft resolution submitted by the Sixth Committee in its report (A/6594, para. 34), the General Assembly would establish a United Nations commission on international trade law, whose object would be the promotion of the progressive harmonization and unification of the law of international trade. The commission, made up of twenty-nine Member States to be elected by the General Assembly at its twenty-second session, would normally hold one regular session a year, meeting alternately at the United Nations Headquarters and the United Nations Office at Geneva. The Secretary-General would be asked to make available to the Commission appropriate staff and facilities required by the commission to fulfil its task. Pending the election of the members of the commission, the Secretary-General would be requested to carry out the preparatory work necessary for the organization of the work of the commission.

2. As the Secretary-General informed the General Assembly in his report on this subject (A/6396 and Add.1 and 2), it would be necessary to establish, within the Office of Legal Affairs, a new secretariat unit devoting its full time to work in this field. To accomplish the preparatory work which the Secretary-General would be asked to undertake in 1967, a nucleus staff, consisting of two professional officers (one D-1 and one P-4) and one secretary (G-3), would be required. The salaries and common staff costs of these staff in the first year are estimated at some \$41,500. Additionally, consultant services would be required to assist in the organization of the future work of the commission. Such services are estimated at \$3,000 for the year 1967. It would also be necessary to make pro-

vision for some travel of staff on official business for the purpose of consulting with international or national organizations and scientific institutions in the field of international trade law. It is estimated that some \$3,000 would be required for this purpose.

3. Since the commission is to come into being through the election of its members by the General Assembly at its twenty-second session, presumably it would hold its first session in 1968. The related servicing costs of these meetings cannot be estimated until the dates and duration are known and considered in the light of the total meetings programme for that year. Accordingly, the Secretary-General would submit revised estimates for 1968 when these factors become known.

4. In the light of the foregoing and in the event of the adoption of the draft resolution by the General Assembly, the Secretary-General would seek additional appropriations, totalling \$47,500, for the year 1967 as follows:

	United States dollars
Section 3. Salaries and wages	
Chapter I. Established posts	28,600
Chapter III. Other temporary assistance (consultants)	3,000
Section 4. Common staff costs	12,900
Section 5. Travel of staff	
Chapter II. Travel of staff on other official business	3,000
TOTAL	47,500

DOCUMENT A/6594*

Report of the Sixth Committee

[Original text: English]
[15 December 1966]

INTRODUCTION

1. At the request of the Hungarian People's Republic, the item entitled "Consideration of steps to be taken for progressive development in the field of private international law with a particular view to promoting international trade" was considered by the General Assembly at its twentieth session. On the basis of the report and recommendations of the Sixth Committee,⁹⁵ the General Assembly at its 1404th plenary meeting, on 20 December 1965, adopted resolution 2102 (XX). The operative part of that resolution reads as follows:

"The General Assembly,

"...

"1. Requests the Secretary-General to submit to the General Assembly at its twenty-first session a comprehensive report including:

* Incorporating documents A/6594/Corr.1 and 2.

⁹⁵ See *Official Records of the General Assembly, Twentieth Session, Annexes*, agenda item 92, document A/6206.

"(a) A survey of the work in the field of unification and harmonization of the law of international trade;

"(b) An analysis of the methods and approaches suitable for the unification and harmonization of the various topics, including the question whether particular topics are suitable for regional, interregional or world-wide action;

"(c) Consideration of the United Nations organs and other agencies which might be given responsibilities with a view to furthering co-operation in the development of the law of international trade and to promoting its progressive unification and harmonization;

"2. Decides to include in the provisional agenda of its twenty-first session an item entitled 'Progressive development of the law of international trade'."

2. At its 1415th plenary meeting, on 24 September 1966, the General Assembly decided to include item 88 entitled "Progressive development of the law of international trade" in the agenda of its twenty-first session and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 946th to 953rd and 955th meetings, on 2, 5 to 9 and 14 December 1966.

4. The Sixth Committee had before it a report of the Secretary-General on this subject (A/6396 and Add.1 and 2), which was submitted in accordance with operative paragraph 1 of General Assembly resolution 2102 (XX). This report was prepared by the Office of Legal Affairs of the United Nations Secretariat on the basis of a preliminary draft elaborated by Professor Clive M. Schmitthoff of the City of London College, whose services had been retained by the Secretary-General for this purpose, and in consultation with the following experts: Dra. Margarita Arguas (Argentina), Dr. Taslim O. Elias (Nigeria), Professor Gyula Eörsi (Hungary), Professor Willis L. Reese (United States) and Professor Mustafa Kamil Yasseen (Iraq).

5. In accordance with the agreement reached during the debate in the Sixth Committee at the twentieth session of the General Assembly, the Secretary-General held consultations with some organs and units of the United Nations, the specialized agencies and other inter-governmental and non-governmental organizations. The International Law Commission advised the Secretary-General that, in view of its many activities and responsibilities and considering its extensive agenda, the Commission did not consider that it would be appropriate for it to undertake responsibilities in the field of the law of international trade. In addition, consultations were carried out with the Secretariat units most directly concerned with responsibilities in this field. The draft report was sent for comments to the secretariat of the United Nations Conference on Trade and Development (UNCTAD), the Department of Economic and Social Affairs, the Centre for Industrial Development and the United Nations regional economic commissions.

6. The Secretary-General sent the draft report for comments to the following specialized agencies: the International Bank for Reconstruction and Development, the Inter-Governmental Maritime Consultative Organization and the International Civil Aviation Organization. Consultations were also carried out with other inter-governmental and non-governmental organizations, namely: the International Institute for the Unification of Private Law, the Hague Conference on Private International Law, the International Chamber of Commerce and the United International Bureaux for the Protection of Intellectual Property.

7. Some of the suggestions received from the above-named United Nations organs, Secretariat units and other institutions were incorporated in the report. Certain observations submitted by the Hague Conference on Private International Law and by the International Institute for the Unification of Private Law, being of a general nature, were published as an addendum to the Secretary-General's report (A/6396/Add.1). The text of a resolution on the subject adopted by the Council of the International Chamber of Commerce was reproduced as document A/6396/Add.2. The Secretary-General of the International Institute for the Unification of Private Law and the Secretary-General of The Hague Conference on Private International Law attended the meetings of the Sixth Committee at which the present item was discussed, and each made a statement at the 946th meeting of the Committee.

8. Chapter I of the report of the Secretary-General contained an analysis of the concept of the term "law of international trade" and explained the two legal techniques which have been used to reduce the conflicts

and divergencies arising from various national laws in matters relating to international trade, i.e., the establishment of rules regulating the conflict of laws and the harmonization of substantive rules. Chapter II consisted of a survey of the work in the field of harmonization and unification of international trade law, by inter-governmental organizations, by regional inter-governmental organizations and groupings and by non-governmental organizations. Chapter III contained an analysis of the methods, approaches and topics which were considered suitable for the progressive harmonization and unification of the law of international trade. The final chapter of the report, chapter IV, dealt with the prospective role of the United Nations in this field; it presented a picture of the progress and shortcomings of the work done and recommended action to remedy the existing shortcomings. In particular it expressed the view that the General Assembly might wish to consider the possibility of establishing a new commission which might be called the United Nations commission on international trade law for the purpose of furthering the progressive development of the law of international trade.

PROPOSALS

9. Argentina, Ceylon, Chile, Colombia, Cyprus, Czechoslovakia, Ecuador, Ghana, Greece, Honduras, Hungary, India, Nepal, Nigeria, Panama, Sudan, the United Arab Republic, the United Republic of Tanzania, Uruguay and Yugoslavia submitted a draft resolution (A/C.6/L.613). Subsequently, Cameroon, Jamaica, Spain and Venezuela (A/C.6/L.613/Add.1) and Bolivia, Romania and the United States of America (A/C.6/L.613/Add.2) added their names to the list of sponsors. In the preamble of the draft resolution the General Assembly would *inter alia*, refer, to the report of the Secretary-General on the progressive development of the law of international trade; reaffirm its conviction that conflicts and divergencies arising from the laws of different States in matters relating to international trade constitute one of the obstacles to the development of world trade; note the efforts made by inter-governmental organizations towards the harmonization and unification of international trade law; note that progress in this area had not been commensurate with the importance and urgency of the problem; express its conviction that it would be desirable for the United Nations to play a more active role in this field; note that such action would be properly within the scope and competence of the Organization under Articles 1 (3) and 13, and Chapters IX and X of the Charter; recall that UNCTAD had a particular interest in promoting the establishment of rules furthering international trade; and recognize that there is no existing United Nations organization which is both familiar with this subject and able to devote sufficient time to work in the field. The operative part of the draft resolution read as follows:

"1. *Decides* to establish a United Nations Commission on International Trade Law which shall have for its object the promotion of the progressive harmonization and unification of the law of international trade.

"Organization of the United Nations Commission on International Trade Law

"2. The United Nations Commission on International Trade Law shall consist of [eighteen] [twenty-one] [twenty-four] [thirty] States, elected by the General Assembly for a term of six years, provided, however, that of the members

elected at the first election, the terms of [six] [seven] [eight] [ten] members shall expire at the end of two years and the terms of [six] [seven] [eight] [ten] other members at the end of four years.

"3. In electing the members of the Commission, the General Assembly shall be guided by the principle of equitable geographical distribution and shall have due regard to the principle that in the Commission as a whole an adequate representation of countries of free enterprise and centrally planned economies, and of developed and developing countries, should be assured.

"4. The representatives of members of the Commission shall be appointed by member States in so far as possible from amongst persons of eminence in the field of the law of international trade.

"5. Retiring members shall be eligible for re-election.

"6. The Commission shall normally hold one regular session a year at the [Headquarters of the United Nations] [European Office of the United Nations].

"7. The Secretary-General shall make available to the Commission appropriate staff and facilities required by the Commission to fulfil its task.

"Functions"

"8. The Commission shall further the progressive harmonization and unification of the law of international trade by

"(a) Co-ordinating the work of organizations active in this field and encouraging co-operation among them;

"(b) Promoting wider participation in existing international conventions, and wider acceptance of existing model and uniform laws;

"(c) In collaboration, where appropriate, with the organizations operating in this field, preparing, and promoting the adoption of, new international conventions, model laws and uniform laws, and the codification and wider acceptance of international trade terms, provisions, customs and practices;

"(d) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the laws of international trade;

"(e) Collecting and disseminating information on national legislation and modern legal developments in the field of the law of international trade;

"(f) Establishing and maintaining a close collaboration with the United Nations Conference on Trade and Development;

"(g) Maintaining liaison with other United Nations organs and specialized agencies concerned with international trade;

"(h) Taking any other action it may deem useful to fulfil its functions.

"9. The Commission shall submit an annual report, including its recommendations, to the General Assembly, and the report shall be submitted simultaneously to the United Nations Conference on Trade and Development for comments. Any such comments or recommendations which the United Nations Conference on Trade and Development or the Trade and Development Board may wish to make, including suggestions on topics for inclusion in the work of the Commission, shall be transmitted to the General Assembly in accordance with the relevant provisions of General Assembly resolution 1995 (XIX). Any other recommendations relevant to the work of the Commission which the United Nations Conference on Trade and Development or the Trade and Development Board may wish to make shall be similarly transmitted to the General Assembly.

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

"11. The Commission may establish appropriate working relationships with intergovernmental organizations and inter-

national non-governmental organizations concerned with the progressive harmonization and unification of the law of international trade."

10. Following informal consultations, the sponsors of draft resolution A/C.6/L.613, joined by Guatemala, Italy, Mali and Turkey, submitted a revised version of the draft resolution (A/C.6/L.613/Rev.1). Later, Malawi and the Netherlands (A/C.6/L.613/Rev.1/Add.1) and Belgium and Syria (A/C.6/L.613/Rev.1/Add.2) joined the sponsors of the revised draft resolution. In this revision: (a) the reference to "conflicts and" was deleted from the third preambular paragraph, so that the resolution would provide for the General Assembly to reaffirm "its conviction that divergencies arising from the laws of different States in matters relating to international trade constitute one of the obstacles to the development of world trade"; (b) the wording of operative paragraph 3 was changed to provide that the General Assembly should, in the election of the members of the commission, be guided by the principle of equitable geographical distribution "with due regard to the adequate representation of the principal economic and legal system of the world and of developed and developing countries"; (c) operative paragraph 8 (c) was changed to read as follows: "Preparing and/or promoting the adoption of new international conventions, model laws and uniform laws, and the codification and wider acceptance of international trade terms, provisions, customs and practices in collaboration, where appropriate, with the organizations operating in this field;"; (d) a reference to "case law" was introduced into operative paragraph 8 (e) so that it would read as follows: "Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade;"; (e) the language in operative paragraph 10 was modified to read: "10. The Commission may consult with or request the services of any international or national organization, scientific institution and individual expert, on any subject entrusted to it if it considers that such consultation or services might assist it in the performance of its functions".

11. As a result of further discussions among the sponsors, a second revision (A/C.6/L.613/Rev.2) was submitted by the sponsors. In accordance with the second revised version of the draft resolution, the General Assembly would (a) express, in the second preambular paragraph, its appreciation for the report of the Secretary-General (A/6396 and Add.1 and 2); (b) add the following, as a new third preambular paragraph: "Considering that international trade co-operation among States is an important factor for promoting friendly relations and consequently for the maintenance of peace and security", and (c) provide for reversal of the order of the former third and fourth preambular paragraphs. The operative part of the second revised draft resolution (A/C.6/L.613/Rev.2) read as follows:

"I"

"1. Decides to establish a United Nations Commission on International Trade Law which shall have for its object the promotion of the progressive harmonization and unification of the law of international trade.

"II"

"Organization and functions of the United Nations Commission on International Trade Law"

"2. The United Nations Commission on International Trade Law shall consist of States, elected by the

General Assembly at its twenty-second session for a term of six years. In electing the members of the Commission, the General Assembly shall observe the following distribution of seats:

- "(a) from African States;
- "(b) from Asian States;
- "(c) from Eastern European States;
- "(d) from Latin American States;
- "(e) from Western European and other States.

"3. Of the members elected at the first election, the terms of members shall expire at the end of three years. The President of the General Assembly shall select these members within each of the five groups of States referred to in the preceding paragraph by drawing lots.

"4. The members elected at the first election shall take office on 1 January 1968. Subsequently, the members shall take office on 1 January of the year following each election.

"5. In electing the members of the Commission, the General Assembly shall be guided by the principle of equitable geographical distribution with due regard to the adequate representation of the principal economic and legal systems of the world, and of developed and developing countries.

"6. The representatives of members on the Commission shall be appointed by Member States in so far as possible from amongst persons of eminence in the field of the law of international trade.

"7. Retiring members shall be eligible for re-election.

"8. The Commission shall normally hold one regular session a year. It shall, if there are no technical difficulties, meet alternately at the United Nations Headquarters and the United Nations Office at Geneva.

"9. The Secretary-General shall make available to the Commission appropriate staff and facilities required by the Commission to fulfil its task.

"10. The Commission shall further the progressive harmonization and unification of the law of international trade by:

"(a) Co-ordinating the work of organizations active in this field and encouraging co-operation among them;

"(b) Promoting wider participation in existing international conventions, and wider acceptance of existing model and uniform laws;

"(c) Preparing and/or promoting the adoption of new international conventions, model laws and uniform laws, and the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field;

"(d) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade;

"(e) Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade;

"(f) Establishing and maintaining a close collaboration with the United Nations Conference on Trade and Development;

"(g) Maintaining liaison with other United Nations organs and specialized agencies concerned with international trade;

"(h) Taking any other action it may deem useful to fulfil its functions.

"11. The Commission shall bear in mind the interests of all peoples and particularly those of developing countries in the extensive development of international trade.

"12. The Commission shall submit an annual report, including its recommendations, to the General Assembly, and the report shall be submitted simultaneously to the United Nations Conference on Trade and Development for comments. Any such comments or recommendations which the United Nations Conference on Trade and Development or

the Trade and Development Board may wish to make, including suggestions on topics for inclusion in the work of the Commission, shall be transmitted to the General Assembly in accordance with the relevant provisions of General Assembly resolution 1995 (XIX). Any other recommendations relevant to the work of the Commission which the United Nations Conference on Trade and Development or the Trade and Development Board may wish to make shall be similarly transmitted to the General Assembly.

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

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

"III

"15. *Requests* the Secretary-General, pending the election of the Commission, to carry out the preparatory work necessary for the organization of the work of the Commission and, in particular (i) to invite Member States to submit in writing before 1 July 1967, taking into account in particular the report of the Secretary-General (A/6396), comments on a programme of work to be undertaken by the Commission in discharging its functions under paragraph 10 of this resolution and (ii) to request similar comments from the organs and organizations referred to in paragraph 10 (f) and (g) and in paragraph 14 of this resolution;

"16. *Decides* to include an item entitled 'Election of the members of the United Nations Commission on International Trade Law' in the provisional agenda of the twenty-second session of the General Assembly."

12. As a result of additional informal consultations, the sponsors of draft resolution A/C.6/L.613/Rev.2 submitted a third revision (A/C.6/L.613/Rev.3) on 13 December, paragraphs 1, 2, 3 and 5 of which read as follows:

"The General Assembly,

"...

"1. *Decides* to establish a 'United Nations Commission on International Trade Law' which shall have for its object the promotion of the progressive harmonization and unification of the law of international trade.

"II

"Organization and functions of the United Nations Commission on International Trade Law

"2. The United Nations Commission on International Trade Law shall consist of twenty-nine States, elected by the General Assembly for a term of six years, except as provided in paragraph 3 of this resolution. In electing the members of the Commission, the General Assembly shall observe the following distribution of seats:

"(a) Seven from African States;

"(b) Five from Asian States;

"(c) Four from Eastern European States;

"(d) Five from Latin American States;

"(e) Eight from Western European and other States.

"3. Of the members elected at the first election to be held at the twenty-second session of the General Assembly, the terms of fourteen members shall expire at the end of three years. The President of the General Assembly shall select these members within each of the five groups of States referred to in the preceding paragraph by drawing lots.

"...

"5. In electing the members of the Commission, the General Assembly shall also have due regard to the adequate

representation of the principal economic and legal systems of the world, and of developed and developing countries.”

13. In the course of the consideration of the third draft (A/C.6/L.613/Rev.3), it was orally agreed by the representative of Colombia on behalf of the sponsors that a more logical sequence of the operative paragraphs could be achieved by certain changes in the order thereof: (a) specifically, it was proposed to transpose the content of operative paragraph 5 without the opening words: “In electing the members of the Commission” to the end of operative paragraph 2; (b) operative paragraphs 6-16 would be renumbered 5-15;⁹⁸ (c) the consequential changes would be made in renumbered operative paragraph 14 (former paragraph 15). Furthermore, the sponsors orally agreed to the following new wording of renumbered operative paragraph 9 (c) (formerly paragraph 10 (c)):

(c) Preparing or promoting the adoption of new international conventions, model laws and uniform laws, and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field;”.

It was also agreed to replace, in the Spanish version of operative paragraph 3, the words “*elegirá por sorteo*” by the words “*designará por sorteo*”.

14. Following the submission of the original draft resolution (A/C.6/L.613 and Add.1 and 2), the Secretary-General presented for the consideration of the Sixth Committee a statement of the administrative and financial implications (A/C.6/L.615) of that draft resolution. Upon the submission of the third revised draft resolution (A/C.6/L.613/Rev.3), he presented a statement of the administrative and financial implications (A/C.6/L.615/Rev.1) of that revised draft resolution.

DISCUSSION

15. Numerous representatives expressed appreciation of the initiative taken by the Hungarian delegation at the twentieth session of the General Assembly with respect to the progressive development of the law of international trade, and welcomed the report of the Secretary-General. The assistance which had been provided by Mr. Schmitthoff in the preparation of the report was recognized as very valuable. The consultations carried on by the Secretary-General with individual experts, with organs of the United Nations and with institutions active in the field had been extremely profitable in the view of numerous representatives.

16. A great number of representatives supported the conclusions of the report, particularly that the United Nations should take an active part in efforts towards the harmonization and unification of the law of international trade. Many representatives stated that this could most appropriately be done by the establishment of a United Nations organ such as the one described in the Secretary-General's report.

17. Several representatives pointed out the extreme importance for developing countries of devoting attention to and participating in efforts towards the progressive development of the law of international

⁹⁸ In drawing up the final text of the draft resolution adopted by the Sixth Committee, the numbering of the paragraphs in the three operative parts was changed to conform to United Nations editorial style.

trade. One representative pointed out that since developing countries were not able, by force of circumstance, to participate in numerous international institutions active in this field, their participation in such a United Nations organ as had been proposed was particularly important to them. It was pointed out in this connexion that the commission could be instrumental in improving trade practices that had evolved in the past, which benefited developed countries at the expense of the developing countries.

Functions of the proposed commission

18. Certain representatives considered that the proposed commission should be authorized to take action both in the area of the harmonization and unification of substantive rules relating to trade law and in the field of conflict of law rules. Other representatives considered that the work of the proposed commission should be primarily in the field of the unification of substantive rules.

19. With respect to the specific role that such a commission should perform, representatives expressed varying views. Certain representatives considered that the commission should engage in co-ordinating and centralizing the efforts of organizations already active in the field under discussion, and in promoting the wider acceptance of instruments already in existence. Others considered that the commission should in addition, where appropriate, perform the function of formulating new international instruments designed to further the development of international trade law. One representative expressed the view that the proposed commission should, in its initial endeavours, concentrate on co-ordinating efforts of institutions already active in the progressive development of international trade law, before considering the possibility of initiating new measures in this field while bearing in mind the financial implications.

20. Certain representatives pointed out that the proposed commission's functions did not include the adoption of instruments binding upon States, but that in this connexion a clarification of the scope of the authority would be welcome. In response to this request, it was stated on behalf of the sponsors that under its terms of reference the commission would work out model laws and uniform laws which could then serve as standards which States might wish to consider as guides in the development of their own national legislation, and formulate draft international instruments to which States would give their consideration.

21. Reference was made by several representatives to the fact that the functions of the commission should not be interpreted to imply that it could engage in activities affecting sectors of private international law which fall outside the laws governing commercial transactions, or that it could take steps having a bearing on international trade relations governed by public law.

Collaboration with other organizations

22. It was pointed out by several representatives that, should the commission engage in formulating activities, it should maintain close liaison with the inter-governmental and non-governmental organizations already active in the field in order to avoid overlapping and duplication. In the latter connexion, numerous representatives pointed out the valuable contributions to the progressive development of international trade law

which had been made by the International Institute for the Unification of Private Law and the Hague Conference on Private International Law. One representative made reference to the fact that both of these institutions had welcomed the establishment of the proposed commission. The Sixth Committee agreed to express its appreciation to these organizations for the major contributions they had made to the work in this field, for their valuable comments on the report of the Secretary-General and for the participation of their representatives in the debates of the Committee. It was suggested that appropriate working relationships should be established between the proposed commission and these two organizations, since the experience and expertise which they had acquired would be of great assistance to the proposed commission. In connexion with the relationship to be established with the two organizations, attention was drawn to the agreements concluded between the Secretary-General of the United Nations and the secretaries-general of those organizations pursuant to Economic and Social Council resolution 678 (XXXVI) of 3 July 1958, and it was suggested that a similar method be followed in connexion with the work of the new commission.

23. Various representatives made mention of the participation of their respective countries in inter-governmental and non-governmental organizations active in this field. Reference was made, for instance, to the Council for Mutual Economic Assistance, the Council of Europe, the Nordic Council, the Asian-African Legal Consultative Commission, the European Economic Community, the Inter-American Council of Jurists, the European Free Trade Association, the United Nations regional economic commissions and to the International Chamber of Commerce and the International Maritime Committee. In this connexion it was pointed out that experience gained by States in the course of participation in such institutions and organizations was relevant to the work of the proposed commission to promote the progressive unification and harmonization of international trade law. It was also pointed out by several representatives that the experience gained by States in seeking to reduce the divergencies existing within their own legal systems could also be relevant to proposed efforts on the international level, which were far more complicated owing to numerous facts such as the variety of legal concepts and languages.

24. During the final stage of the Committee's deliberations and in view of the new formulation of operative paragraph 9 (c) of the draft resolution (A/C.6/L.613/Rev.3), as described in paragraph 13 of the present report, a question arose as to whether the collaboration in operative paragraph 9 (c) mentioned was to be understood to apply to all of the activities of the proposed commission described in that sub-paragraph. It was agreed by the representatives who spoke on this issue and on behalf of the sponsors that there was no doubt that the collaboration referred to applied to all the activities of the commission enumerated in the sub-paragraph under discussion.

Relationship with the United Nations Conference on Trade and Development (UNCTAD)

25. The Committee discussed the relationship which should exist between work relating to the progressive development of the law of international trade and UNCTAD. Several representatives welcomed the provision in the draft resolution for the submission to

UNCTAD of the reports prepared by the commission for the General Assembly since this would assure the required liaison with the Assembly and would assist the commission in reaching solutions which were attuned to the practical needs of the commercial world. Reference was made to paragraph 14 of General Assembly resolution 1995 (XIX), of 30 December 1964, providing that when the Conference was not in session, the Trade and Development Board carries out its functions.

Size and composition of the proposed commission and terms of office of its members

26. In commenting on the size of the proposed commission, representatives expressed various preferences. However, they agreed that it should be small enough not to be unwieldy but large enough to allow for a membership in which States of the various legal and socio-economic systems and States in different stages of development would be represented. One representative suggested, for example, that there should be between twenty-four and thirty members; another believed that the size should be between twenty-four and twenty-seven; yet another suggested a commission with from eighteen to twenty-four members, while another considered that from twenty-one to twenty-eight would be an appropriate solution. It was pointed out by one representative that it should be borne in mind that in certain areas there existed a scarcity of persons who are highly qualified legal experts in the technical and complicated field of international trade law.

27. Upon the introduction of draft resolution A/C.6/L.613/Rev.3, it was pointed out on behalf of the sponsors that the formulation of the revised version and the distribution of seats provided for in operative paragraph 2 thereof had been arrived at in a spirit of co-operation and compromise. It was hoped that although the solution proposed in the revised draft resolution was not completely satisfactory to all delegations, it could be adopted in the same spirit of co-operation. Several representatives spoke in support of this view.

28. The representative of Ecuador, speaking on behalf of his delegation and the delegations of Bolivia, Colombia, El Salvador, Honduras, Jamaica, Mexico, Panama, Paraguay and Uruguay, and the representative of Venezuela on his own behalf, wished to record the conviction of these delegations that the distribution of seats in the proposed commission, as provided for in the draft resolution (A/C.6/L.613/Rev.3), did not reflect an equitable geographical distribution in respect of the States of Latin America and did not take into consideration the realities of that region. The Ecuadorian representative stated that, in the view of the delegations for which he spoke, the disposition of seats suggested in the draft resolution should not constitute a precedent in respect of any future organs which might be established. The representatives of the African and Asian States, of the Eastern European States and of the Western European and other States, giving the views of their groups or of their own delegations, expressed their belief that the representation provided for was not an equitable solution, but that in the interest of progress and in view of the contribution which the proposed commission could be expected to make, they would accept the compromise reached. Another representative expressed the hope that the resolution would not be interpreted with undue rigidity.

29. The draft resolution (A/C.6/L.613/Rev.3) provided that the term of office of the members of the commission should be six years, but in order to ensure a degree of continuity in its membership, a rotation system was envisaged whereby the terms of office of fourteen of the members elected at the first election—which would take place at the twenty-second session of the General Assembly—would expire at the end of three years; the President at that session would select those fourteen members by drawing lots. The sponsors of the draft resolution agreed that the fourteen members with three-year terms would be selected as follows from the different groups:

- Four from African States;
- Two from Asian States;
- Two from Eastern European States;
- Two from Latin American States; and
- Four from Western European and other States.

Place of meeting

30. With respect to the place where the sessions of the proposed commission should be held, various representatives expressed divergent opinions. It was pointed out, on the one hand, that reasons of economy and efficiency would call for a choice of the United Nations Headquarters as the seat of the proposed commission; on the other hand, some argued it might be more appropriate and convenient if Geneva were chosen. A number of delegations remarked that the commission should co-operate closely with UNCTAD whose headquarters are located in Geneva, in view of the importance of that organ and of its interest in promoting the establishment of rules furthering international trade. It was finally agreed, as a compromise solution, that if there were no technical difficulties, the commission should meet alternately at United Nations Headquarters and the European Office of the United Nations at Geneva.

Time of election of members of the commission and of its first session

31. Certain representatives expressed the need for careful preparation in connexion with the establishment of the proposed commission. Some representatives sug-

gested that prior to the establishment of the commission preliminary studies should be made of subjects which might be suitable for consideration by the commission. Other representatives stated that there was a need for careful consideration of the financial implications of the establishment at the appropriate time of such a commission. It was suggested by several representatives that prior to the election of the members of the commission it might be wise to provide for further study and consultation. It was suggested in this connexion that were such a course to be adopted, during the intervening period the Secretariat could make administrative and technical preparations for the work of the commission and might circulate requests to Member States and to inter-governmental and non-governmental institutions for suggestions as to the work programmes of the commission.

32. It was finally agreed that the commission would be elected by the General Assembly at its twenty-second session and that, pending the election, the Secretary-General would be requested to carry out the preparatory work necessary for the organization of the work of the commission.

VOTING

33. At its 955th meeting, on 14 December 1966, the Sixth Committee adopted unanimously revised draft resolution (A/C.6/L.613/Rev.3), as amended (see para. 13 above). The representatives of Cameroon, Dahomey, Ecuador, France, Ghana, Greece, Mexico, Nepal, Somalia, Venezuela and the United States of America explained their votes.

Recommendation of the Sixth Committee

34. The Sixth Committee therefore recommends to the General Assembly the adoption of the following draft resolution:

ESTABLISHMENT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

[Text adopted by the General Assembly without change. See "Action taken by the General Assembly" below.]

DOCUMENT A/6609

Financial implications of the draft resolution submitted by the Sixth Committee in document A/6594

Report of the Fifth Committee

[Original text: English]
[15 December 1966]

1. At its 1170th meeting, on 16 December 1966, the Fifth Committee considered a note by the Secretary-General (A/C.5/1107) concerning the financial implications of the draft resolution recommended by the Sixth Committee for adoption by the General Assembly (A/6594, para. 34), relating to the establishment of a United Nations commission on international trade law. The Chairman of the Advisory Committee on Administrative and Budgetary Questions reported orally on behalf of that Committee.

2. One delegation questioned the necessity for a post at the D-1 level in the unit to be established.

3. The Fifth Committee decided to inform the General Assembly that, should it adopt the Sixth Committee's draft resolution, an additional appropriation in

the amount of \$47,500 would be required, divided as follows among the sections of the budget for 1967: \$31,600 under section 3 (Salaries and wages); \$12,900 under section 4 (Common staff costs); \$3,000 under section 5 (Travel of staff). The Fifth Committee also decided to advise the Assembly that the costs of the first session of the commission, which would be held in 1968, would be the subject of revised estimates for that year, to be submitted to the General Assembly at its twenty-second session.

ACTION TAKEN BY THE GENERAL ASSEMBLY

At its 1497th plenary meeting, on 17 December 1966, the General Assembly adopted unanimously the draft resolution submitted by the Sixth Committee (A/6594, para. 34). For the final text, see *Official Records of the General Assembly, Twenty-first Session, Supplement No. 16*, resolution 2205 (XXI).

CHECK LIST OF DOCUMENTS

NOTE. This check list includes the documents mentioned during the consideration of agenda item 88 which are not reproduced in the present fascicle.

Document No.	Title or description	Observations and references
A/C.6/L.613 and Add.1 and 2	Argentina, Bolivia, Cameroon, Ceylon, Chile, Colombia, Cyprus, Czechoslovakia, Ecuador, Ghana, Greece, Honduras, Hungary, India, Jamaica, Nepal, Nigeria, Panama, Romania, Spain, Sudan, United Arab Republic, United Republic of Tanzania, United States of America, Uruguay, Venezuela and Yugoslavia: draft resolution	See A/6594, para. 9
A/C.6/L.613/Rev.1 and Add.1 and 2	Argentina, Belgium, Bolivia, Cameroon, Ceylon, Chile, Colombia, Cyprus, Czechoslovakia, Ecuador, Ghana, Greece, Guatemala, Honduras, Hungary, India, Italy, Jamaica, Malawi, Mali, Nepal, Netherlands, Nigeria, Panama, Romania, Spain, Sudan, Syria, Turkey, United Arab Republic, United Republic of Tanzania, United States of America, Uruguay, Venezuela and Yugoslavia: revised draft resolution	<i>Ibid.</i> , para. 10
A/C.6/L.613/Rev.2	Argentina, Belgium, Bolivia, Cameroon, Ceylon, Chile, Colombia, Cyprus, Czechoslovakia, Ecuador, Ghana, Greece, Guatemala, Honduras, Hungary, India, Italy, Jamaica, Malawi, Mali, Nepal, Netherlands, Nigeria, Panama, Romania, Spain, Sudan, Syria, Turkey, United Arab Republic, United Republic of Tanzania, United States of America, Uruguay, Venezuela and Yugoslavia: revised draft resolution	<i>Ibid.</i> , para. 11
A/C.6/L.613/Rev.3	Argentina, Belgium, Bolivia, Cameroon, Ceylon, Chile, Colombia, Cyprus, Czechoslovakia, Ecuador, Ghana, Greece, Guatemala, Honduras, Hungary, India, Italy, Jamaica, Malawi, Mali, Nepal, Netherlands, Nigeria, Panama, Romania, Spain, Sudan, Syria, Turkey, United Arab Republic, United Republic of Tanzania, United States of America, Uruguay, Venezuela and Yugoslavia: revised draft resolution	<i>Ibid.</i> , para. 12
A/C.6/L.615	Financial implications of the draft resolution contained in document A/C.6/L.613: note by the Secretary-General	Mimeographed
A/C.6/L.615/Rev.1	Financial implications of the draft resolution contained in document A/C.6/L.613/Rev.3: note by the Secretary-General	Ditto