

X. PROGRAMME OF WORK AND WORKING METHODS

A. Programme of work of the Commission: note by the Secretariat (A/CN.9/300) [Original: English]

INTRODUCTION

1. This report is submitted pursuant to a decision of the Commission at its twentieth session in 1987 that the secretariat should prepare a report for the twenty-first session that would serve as a basis for a general discussion of the work of the Commission for the medium term future (A/42/17, para. 343).¹ It considers topics on which the Commission is currently preparing a draft legal text with an indication of the projected time schedule for completion. It also considers topics on which the Commission might wish to make a decision at this session as to whether they should be placed on the programme of work.

I. Topics currently before the Commission

A. *Draft Convention on International Bills of Exchange and International Promissory Notes*

2. The draft Convention was adopted by the Commission at its twentieth session and submitted to the General Assembly with a recommendation "that the General Assembly consider the draft Convention with a view to its adoption or any other action to be taken" (A/42/17, para. 304).

3. The General Assembly in its resolution 42/153 requested the Secretary-General to call the attention of all States to the draft Convention, to ask them to submit their comments and proposals thereon prior to 30 April 1988, and to send those comments and proposals to all Member States prior to 30 June 1988. The General Assembly also decided that it would consider the draft Convention during the course of its forty-third regular session in 1988 with a view to adopting the Convention during that session. It decided to create for that purpose, within the framework of the Sixth Committee, a working group to meet for a maximum of two weeks at the beginning of the session in order to consider the comments and proposals of States.

4. While the draft Convention is no longer before the Commission, its consideration by the working group and the Sixth Committee may affect the working schedules of some representatives and observers to the Commission and of the secretariat during 1988.

¹Report of the United Nations Commission on International Trade Law on the work of its twentieth session, *Official Records of the General Assembly, Forty-second Session, Supplement No. 17 (A/42/17)*.

B. *Liability of operators of transport terminals*

5. The Working Group on International Contract Practices will hold its eleventh session in New York from 18 to 29 January 1988. It is possible that at that session the Working Group will complete its work of preparing the draft Uniform Rules on the Liability of Operators of Transport Terminals. If another session is needed to complete the draft Rules, it will be held at Vienna in the second half of 1988. Therefore, by late 1988 or the beginning of 1989 the Working Group will be free to undertake additional tasks.

6. The Commission may wish to decide at its present session that the draft Uniform Rules as adopted by the Working Group should be circulated to all States and interested international organizations for comment and that the draft Uniform Rules with an analytical compilation of the comments received should be submitted to the Commission at its twenty-second session in 1989 for discussion and adoption.

7. The Working Group has not yet decided whether it will recommend to the Commission that the Uniform Rules should be adopted in the form of a convention or in the form of a model law. If the Commission were to decide that the Uniform Rules should be in the form of a convention and if the convention were to be adopted by a diplomatic conference, the conference would probably take place in 1991.

C. *Model Rules for electronic funds transfers*

8. The Working Group on International Payments held its sixteenth session at Vienna from 2 to 13 November 1987 at which it began the work leading to the preparation of Model Rules for Electronic Funds Transfers (A/CN.9/297). At the conclusion of the session the secretariat was asked to prepare a first draft of the Model Rules for submission to the seventeenth session of the Working Group to be held in New York from 5 to 15 July 1988.

9. Since the first draft of the Model Rules has not yet been submitted to the Working Group, it is not possible to know how difficult it will be to achieve consensus on their coverage and substance and, therefore, to make a precise estimate of the length of time necessary to prepare the Model Rules. Nevertheless, if it is assumed that five sessions of the Working Group were necessary to consider the draft text and if it is assumed that two

sessions could be held in 1988 and 1989 and one in 1990, the draft Model Rules could be submitted to the Commission for discussion and adoption in 1991.

D. *International procurement*

10. The Commission at its nineteenth session decided that upon the completion of its work preparing the draft *UNCITRAL Legal Guide* on Drawing Up International Contracts for the Construction of Industrial Works, the Working Group on the New International Economic Order should undertake the subject of international procurement (A/41/17, para. 243). The secretariat has been undertaking preparatory work and held a meeting of a group of experts at Vienna from 7 to 11 December 1987 to advise it in the preparation of the documentation for the first meeting of the Working Group on this subject.

11. The Working Group is scheduled to hold its tenth session from 17 to 28 October 1988 at Vienna when it will undertake its consideration of the subject of international procurement. At that session the Working Group may be expected to recommend the nature of any work that might be undertaken in this field. One possible recommendation might be that the Commission prepare and adopt an agreed set of principles on public procurement to which States would be encouraged to conform in formulating their national procurement codes or regulations or in revising existing codes or regulations. The Working Group might also anticipate that, once the agreed set of principles had been established, the Commission might prepare a model procurement code based upon those principles. It could be expected that a draft of an agreed set of principles might be ready for submission to the Commission at its twenty-third session in 1990. A draft model procurement code might be ready for presentation to the Commission at its twenty-sixth session in 1993.

II. Other topics

A. *Standby letters of credit and guarantees*

12. The Commission at its fifteenth session in 1982 requested the secretariat to submit at a future session a report on the use of letters of credit especially in connection with contracts other than those for the sale of goods (A/37/17, para. 112). The Commission will have before it at this session a report on standby letters of credit and guarantees (A/CN.9/301). The report will suggest actions that might be undertaken by the Commission. If the Commission should decide to undertake work in this field, it may wish to decide on the priority to be given to the topic.

B. *Countertrade*

13. The Commission at its nineteenth session in 1986 placed the subject of countertrade on its programme of work and requested the secretariat to prepare a report

for a future session on the work that might be undertaken by the Commission in this field (A/41/17, para. 243). The Commission will have before it at this session a report on the subject that will include suggestions for future work by the Commission (A/CN.9/302). If the Commission should decide to undertake work in this field, it may wish to decide on the priority to be given to the topic.

C. *International commercial arbitration*

14. The Commission at its nineteenth session in 1986 decided that the secretariat should submit at a future session in-depth studies on the taking of evidence in arbitral proceedings and on multi-party arbitration (A/41/17, para. 258). The secretariat intends to submit the requested studies to the earliest possible session of the Commission, taking into account the decisions made by the Commission at this session on the other items for the programme of work and the level of staffing available to the secretariat in the near to medium-term future.

D. *Transport documents*

15. The subject of transport documents came before the Commission for the first time during its preparation of the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules). While the Hamburg Rules recognize the continuing importance of the bill of lading, and in article 15 set forth the minimum contents of such a document, several provisions encourage a movement towards other forms of documentation. Article 2 provides that the Hamburg Rules (and especially the liability regime, including the limitation of liability) apply to the carriage of goods under any form of contract of carriage. Article 14 provides that a bill of lading need be issued by the carrier only if requested by the shipper. Article 18 provides for the legal effect of a document other than a bill of lading issued to evidence the receipt of goods to be carried.

16. The Commission had before it at its fifteenth session in 1982 a study discussing the legal regime in respect of transport documentation under the principal multilateral conventions and some of the current developments in the field (A/CN.9/225 and Corr.1). The report concluded that there might be a greater need in the future than there had been in the past for the harmonization of the rules governing such transport documentation. The Commission requested the secretariat to keep it informed of any future course of action that it might take (A/37/17, para. 104).

17. The Commission had before it at its seventeenth session in 1984 a report of the Secretary-General concerning the 1983 revision of the Uniform Customs and Practice for Documentary Credits (UCP) by the International Chamber of Commerce (A/CN.9/251). The report pointed out that one of the reasons for the revision of the 1974 version of UCP had been the

changes in transport technology and documentation. The Commission adopted a decision by which it commended the use of the 1983 revision of UCP in transactions involving the use of a documentary credit (A/39/17, para. 129).

18. Article 4 of the draft uniform rules on the liability of operators of transport terminals contains provisions on the document that may be issued by operators of transport terminals (A/CN.9/298, Annex).

19. A report of the Secretary-General to the twentieth session of the Commission on the legal implications of automatic data processing described the efforts of the International Rail Transport Committee (CIT) to establish an electronic replacement for the rail consignment note that would be acceptable to banks for use in documentary credits and to custom officials (A/CN.9/292, paras. 19-23).

20. An international subcommittee of the Comité Maritime International (CMI) is currently preparing draft rules on sea waybills and on electronic waybills, which may be approaching completion within the next

year. The secretariat has submitted comments on the current draft to CMI.

21. The Commission might wish to consider whether these developments would make it desirable for it to engage in a general review of the subject of the changes taking place in transport techniques and transport documentation, with special attention to the CMI draft rules, and with a view to determining whether it might make a further contribution in this field. Such a discussion might be particularly appropriate at the Commission's twenty-second session in 1989 when the major item on the agenda is expected to be the uniform rules on liability of operators of transport terminals.

E. Other possible subjects

22. At the session of the Commission the secretariat plans to bring to the Commission's attention additional subjects for consideration for its future programme of work. These will be subjects that the secretariat has some reason would be appropriate for work by the Commission, but about which the secretariat does not currently have enough information to make a suggestion.

B. Working methods of the Commission: note by the Secretariat (A/CN.9/299) [Original: English]

INTRODUCTION

1. The Commission at its twentieth session in 1987 decided that consideration should be given at its twenty-first session to several different issues regarding the working methods of the Commission. This note is intended to give background information for the consideration of those issues.

I. Increase in membership of the Commission

2. The Commission decided that at the twenty-first session consideration should be given to requesting the General Assembly to increase the membership of the Commission (A/42/17, para. 344).¹

3. The original membership of the Commission as provided in General Assembly resolution 2205 (XXI) was 29 States with the following distribution of seats:

- (a) Seven from African States;
- (b) Five from Asian States;
- (c) Four from Eastern European States;

¹Report of the United Nations Commission on International Trade Law on the work of its twentieth session, *Official Records of the General Assembly, Forty-second Session, Supplement No. 17* (A/42/17). Reports of the annual session of the Commission are reprinted in the Yearbook of the United Nations Commission on International Trade Law for the year in question.

- (d) Five from Latin American States;
- (e) Eight from Western European and other States.

4. Of the original 29 members, 14 were elected for a period of three years, with their mandates expiring on 31 December 1970, and 15 were elected for a period of six years, with their mandates expiring on 31 December 1973. In subsequent elections all members were to be elected for periods of six years with their mandates expiring on 31 December of the year in question. The date of expiration of membership was later changed by resolution 31/99 to the last day prior to the opening of the seventh annual session of the Commission following the date of election.

5. At the sixth session of the Commission in 1973 attention was drawn to the fact that the mandate of 15 member States would expire on 31 December 1973 and that this would have certain implications for the membership of Working Groups that were scheduled to meet between 1 January 1974 and the Commission's seventh session later that year (A/9017, para. 139).

6. At the session of the General Assembly later in 1973, a draft resolution was introduced in the Sixth Committee that would have increased the membership of the Commission from 29 to 35 with the following distribution of the additional seats:

- (a) Two from African States;