

**REPORT  
OF THE  
UNITED NATIONS COMMISSION  
ON  
INTERNATIONAL TRADE LAW  
on the work of its twenty-first session**

---

**11-22 April 1988**

**GENERAL ASSEMBLY**

**OFFICIAL RECORDS: FORTY-THIRD SESSION**

**SUPPLEMENT No. 17 (A/43/17)**



**UNITED NATIONS**

**New York, 1988**

# **NOTE**

**Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.**

[27 June 1988]

## CONTENTS

<u>Chapter</u>	<u>Paragraphs</u>	<u>Page</u>
INTRODUCTION .....	1 - 2	1
I. ORGANIZATION OF THE SESSION .....	3 - 10	2
A. Opening .....	3	2
B. Membership and attendance .....	4 - 7	2
C. Election of officers .....	8	3
D. Agenda .....	9	3
E. Adoption of the report .....	10	4
II. INTERNATIONAL PAYMENTS .....	11 - 26	5
A. Electronic funds transfers .....	11 - 13	5
B. Draft Convention on International Bills of Exchange and International Promissory Notes .....	14 - 17	5
C. Stand-by letters of credit and guarantees .....	18 - 26	6
III. LIABILITY OF OPERATORS OF TRANSPORT TERMINALS .....	27 - 31	8
IV. INTERNATIONAL COUNTERTRADE .....	32 - 35	9
V. PROCUREMENT .....	36 - 38	10
VI. FUTURE PROGRAMME OF WORK .....	39 - 52	11
VII. CO-ORDINATION OF WORK .....	53 - 64	14
VIII. STATUS AND PROMOTION OF TEXTS OF THE COMMISSION .....	65 - 86	17
A. Status of conventions .....	65 - 72	17
B. Promotion of texts of the Commission .....	73 - 82	19
C. Promotion of the Legal Guide .....	83 - 86	20
IX. TRAINING AND ASSISTANCE .....	87 - 97	22
X. COLLECTION AND DISSEMINATION OF INFORMATION ON INTERPRETATION OF LEGAL TEXTS OF THE COMMISSION .....	98 - 109	24

# CONTENTS (continued)

<u>Chapter</u>	<u>Paragraphs</u>	<u>Page</u>
XI. WORKING METHODS OF THE COMMISSION .....	110 - 119	27
A. Increase in membership of the Commission .....	111 - 116	27
B. Size and role of the working groups .....	117 - 119	28
XII. RELEVANT GENERAL ASSEMBLY RESOLUTIONS AND OTHER BUSINESS .	120 - 124	29
A. General Assembly resolutions on the work of the Commission .....	120	29
B. Date and place of the twenty-second session of the Commission .....	121	29
C. Sessions of the working groups .....	122 - 124	29
<u>Annex.</u> List of documents of the session .....		31

## INTRODUCTION

1. The present report of the United Nations Commission on International Trade Law covers the Commission's twenty-first session, held in New York, from 11 to 20 April 1988.
2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

ORGANIZATION OF THE SESSION

A. Opening

3. The United Nations Commission on International Trade Law (UNCITRAL) commenced its twenty-first session on 11 April 1988. The session was opened by Mr. Eric E. Bergsten, Secretary of the Commission.

B. Membership and attendance

4. General Assembly resolution 2205 (XXI) established the Commission with a membership of 29 States, elected by the Assembly. By resolution 3108 (XXVIII), the General Assembly increased the membership of the Commission from 29 to 36 States. The present members of the Commission, elected on 15 November 1982 and 10 December 1985, are the following States whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated:   /

Algeria (1989), Argentina (1992), Australia (1989), Austria (1989), Brazil (1989), Central African Republic (1989), Chile (1992), China (1989), Cuba (1992), Cyprus (1992), Czechoslovakia (1992), Egypt (1989), France (1989), German Democratic Republic (1989), Hungary (1992), India (1992), Iran (Islamic Republic of) (1992), Iraq (1992), Italy (1992), Japan (1989), Kenya (1992), Lesotho (1992), Libyan Arab Jamahiriya (1992), Mexico (1989), Netherlands (1992), Nigeria (1989), Sierra Leone (1992), Singapore (1989), Spain (1992), Sweden (1989), Union of Soviet Socialist Republics (1989), United Kingdom of Great Britain and Northern Ireland (1989), United Republic of Tanzania (1989), United States of America (1992), Uruguay (1992) and Yugoslavia (1992).

5. With the exception of the Libyan Arab Jamahiriya, all members of the Commission were represented at the session.

6. The session was also attended by observers from the following States: Bangladesh, Bulgaria, Burma, Canada, Democratic Yemen, Denmark, El Salvador, Finland, Gabon, Germany, Federal Republic of, Holy See, Honduras, Indonesia, Morocco, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Rwanda, Saint Lucia, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Turkey, Vanuatu and Venezuela.

7. The following United Nations organ, specialized agency, intergovernmental organizations and international non-governmental organizations were represented by observers:

(a) United Nations organs

International Trade Centre (UNCTAD/GATT)

(b) Specialized agencies

United Nations Industrial Development Organization

(c) Intergovernmental organizations

Asian-African Legal Consultative Committee  
Hague Conference on Private International Law  
International Institute for the Unification of Private Law

(d) Other international organizations

Inter-American Bar Association  
Inter-American Commercial Arbitration Commission  
International Chamber of Commerce  
Latin American Federation of Banks

C. Election of officers 2/

8. The Commission elected the following officers:

Chairman: Mr. Henry M. Joko-Smart (Sierra Leone)

Vice-Chairmen: Mr. Michael Joachim Bonell (Italy)  
Mr. Rafael Eyzaguirre (Chile)  
Mr. Kuchibhotla Venkataramiah (India)

Rapporteur: Mr. Iván Szász (Hungary)

D. Agenda

9. The agenda of the session, as adopted by the Commission at its 389th meeting, on 11 April 1988, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. International payments.
5. Operators of transport terminals.
6. Procurement.
7. Countertrade.
8. Future programme of work.
9. Co-ordination of work.
10. Status and promotion of UNCITRAL texts.
11. Training and assistance.
12. Interpretation of conventions.

13. Working methods of the Commission.
14. General Assembly resolutions on the work of the Commission.
15. Other business.
16. Date and place of future meetings.
17. Adoption of the report of the Commission.

**E. Adoption of the report**

10. At its 401st meeting, on 20 April 1988, the Commission adopted the present report by consensus.

## CHAPTER II

### INTERNATIONAL PAYMENTS

#### A. Electronic funds transfers

11. The Commission decided, at its nineteenth session in 1986, to begin the preparation of Model Rules on electronic funds transfers and to entrust this task to the Working Group on International Payments. 3/ The Commission had before it at the current session the report of the Working Group on the work of its sixteenth session (A/CN.9/297), at which the Working Group had undertaken the preparation of the Model Rules.

12. The Working Group commenced its work by considering a list of legal issues that might be considered for inclusion in the Model Rules contained in a report prepared by the secretariat (A/CN.9/WG.IV/WP.35). At the end of its session, the Working Group requested the secretariat to prepare draft provisions based on the discussions in the Working Group for its consideration at its next session (A/CN.9/297, para. 98).

13. The Commission discussed whether the Model Rules to be drafted by the Working Group should be restricted to international funds transfers or should also be applicable to domestic funds transfers. After discussion, the Commission agreed with the prevailing view in the Working Group that the Model Rules should concentrate on problems arising in international funds transfers, but would have to consider both domestic and international aspects of such transactions, and that a decision would have to be made at a later time on the extent to which the rules should be considered to be applicable to domestic funds transfers.

#### B. Draft Convention on International Bills of Exchange and International Promissory Notes

14. The Commission took note of General Assembly resolution 42/153 of 7 December 1987, in which the Assembly had requested the Secretary-General to ask all States to submit the observations and proposals they wished to make on the draft Convention before 30 April 1988 and decided to consider, at its forty-third session, the draft Convention, with a view to its adoption at that session, and to create to this end, in the framework of the Sixth Committee of the General Assembly, a working group that would meet for a maximum period of two weeks at the beginning of the session, in order to consider the observations and proposals made by States.

15. The Commission considered some procedural aspects of the implementation of that resolution. For example, several representatives expressed the concern that their Governments would be unable to meet the deadline for the submission of observations and proposals. However, they indicated that their Governments would attempt to submit their comments as soon as possible so as to enable the Secretariat to translate and distribute them by 30 June 1988, as provided in the resolution.

16. As regards the working group to be convened in the framework of the Sixth Committee, it was generally agreed that Governments would soon need to know the precise dates of the working group session so as to enable them to make the

appropriate arrangements, including the inclusion of experts in the special field of negotiable instruments law in their delegations to the Sixth Committee. It was realized that the determination of the dates fell within the exclusive competence of the Sixth Committee and that the dates would thus finally be decided upon only after the Sixth Committee had commenced its work. Nevertheless, the Commission deemed it desirable, in view of the above-mentioned need, to express a wish as regards those dates and to invite the Sixth Committee to have due regard to that wish when fixing the dates of the working group session. In view of the decision of the General Assembly that the working group would meet at the beginning of its forty-third session for a maximum period of two weeks, the Commission expressed the wish that the working group be convened during the period of 26 September to 7 October 1988.

17. It was noted that the General Assembly had decided to consider, at its forty-third session, the draft Convention with a view to its adoption at that session. In the light of the fact that the draft Convention had been prepared over a 16-year period, the view was expressed that the Commission should recommend to the General Assembly that the project be brought to completion at its forthcoming session. Another view was that it was inopportune for the Commission to make any such recommendation, especially since the Assembly was in any event aware of the recommendation made by the Commission at its twentieth session. 4/

#### C. Stand-by letters of credit and guarantees

18. The Commission considered the report of the Secretary-General on stand-by letters of credit and guarantees (A/CN.9/301) and, in particular, the conclusions and suggestions as to possible future work of the Commission in this field. The report described in its first part the functions and characteristics of stand-by letters of credit and independent guarantees. In its second part, it provided an overview of the legal framework, comprising statutory provisions of law, case law and uniform rules. In its third part, the report discussed some sample legal issues that may arise in the context of stand-by letters of credit as well as guarantees. The report concluded that there existed considerable disparity and uncertainty in respect of the legal rules governing the two kinds of instruments.

19. The Commission agreed with the conclusion of the report that a greater degree of certainty and uniformity was desirable. The Commission noted with approval the suggestion in the report that future work be envisaged in two stages, the first relating to contractual rules or model terms and the second pertaining to statutory law.

20. As regards the first stage, the Commission welcomed the work undertaken by the International Chamber of Commerce (ICC) in preparing draft Uniform Rules on Guarantees. The Commission was agreed that world-wide acceptable uniform rules would usefully contribute to overcoming the current uncertainties and disparities in this field of considerable practical importance. It was agreed that comments and possible recommendations by States Members of the Commission, with its balanced representation of all regions and the various legal and economic systems, could help to enhance the world-wide acceptability of such rules. In this connection, the observer for ICC stated that ICC would welcome such support and contribution by the Commission which was in line with the long-standing and fruitful co-operation between the two organizations.

21. There was wide support for the suggestion set forth in the report to devote one session of the Working Group on International Contract Practices in November of this year to a review of the ICC draft Uniform Rules on Guarantees. Such a review would help to assess the world-wide acceptability of the draft Rules and to formulate comments and possible suggestions that ICC could take into account before finalizing the draft Rules. However, since this would be the first time that a working group of the Commission would review a text prepared by another organization, a view was expressed that this instance should remain an exception and not constitute a precedent. Another view was expressed that, in addition to procedural and financial considerations, it would not be appropriate to convene a working group to review a non-statutory text that was under preparation by another organization. In the spirit of co-operation, it would be appropriate for comments and possible suggestions to be made through the traditional channels of communication used in respect of other ICC texts, e.g., direct communications to ICC either from individual Governments or business circles or through the National Committees of ICC.

22. The prevailing view in the Commission after the deliberations was that it should entrust its Working Group on International Contract Practices, during one session in November 1988, with a review of the ICC draft Rules and with a consideration of the desirability and feasibility of any future work relating to the second stage.

23. The second stage, as envisaged in the conclusions of the report, was to consider the advisability of striving for greater uniformity at the statutory law level. The suggestion was to attempt the preparation of a uniform law, convention or model law that would deal with those matters that could not effectively be regulated by agreement of the parties, including any uniform rules. Examples noted in the report include the recognition of party autonomy and of the independent nature of guarantees. Of particular importance would be a clear regulation of those objections to a demand for payment that do not follow from the guarantee agreement but are based on instances such as fraud or manifest abuse.

24. While some doubts were expressed as to the practical need and usefulness of such a uniform law, there was wide support for the view that successful work in this direction was desirable in view of the practical problems that could only be dealt with at the statutory level. The Commission was aware of the difficulties inherent in such an effort relating to fundamental concepts of law, such as fraud or similar grounds for objections, and touching upon procedural matters. Nevertheless, it was felt that, in view of the desirability of legal uniformity and certainty, a serious effort should be made.

25. It was agreed that a final decision on this point could and should be taken only after the discussions in the Working Group, on the basis of its findings and advice concerning the desirability and feasibility of work towards a uniform law. The Commission requested the Secretariat to report to it at its twenty-second session on any pertinent developments within ICC and to prepare a study on the possible features and issues that might appropriately be covered in a uniform law.

26. On the basis of all such information, including the results of consultations by Governments with interested groups in their countries, the Commission would be in a position at its twenty-second session to take a final decision on whether a uniform law should be prepared and, if so, what its scope and contents should be, including the question of whether, in addition to guarantees and stand-by letters of credit, traditional documentary letters of credit should also be covered.

## CHAPTER III

### LIABILITY OF OPERATORS OF TRANSPORT TERMINALS

27. The Commission, at its sixteenth session in 1983, decided to include the topic of liability of operators of transport terminals in its programme of work and to assign work on the preparation of uniform rules on that subject to a working group. 5/ At its seventeenth session in 1984, the Commission decided to assign that task to its Working Group on International Contract Practices. 6/

28. At its current session, the Commission had before it the report of the Working Group on International Contract Practices on the work of its eleventh session (A/CN.9/298). The Commission noted that the Working Group had completed its task of preparing a draft text of uniform rules on the liability of operators of transport terminals and that the Working Group had recommended the adoption of the uniform rules in the form of a convention. The Commission expressed its appreciation to the Working Group and to its Chairman, Mr. Michael Joachim Bonell of Italy, for the work achieved.

29. The Commission decided to consider at its twenty-second session, with a view to its adoption, the draft Convention on the Liability of Operators of Transport Terminals in International Trade as prepared by the Working Group. The Commission requested the Secretary-General to transmit the draft Convention to all States and interested international organizations for comments. The Secretariat was requested to prepare and distribute a compilation of the comments as early as possible before the twenty-second session of the Commission. The Commission further requested the Secretary-General to prepare for that session a draft of final clauses to the draft Convention.

30. It was noted that the Commission, upon adopting the draft Convention, might decide to recommend to the General Assembly the convening of a diplomatic conference for the conclusion of a Convention on the Liability of Operators of Transport Terminals in International Trade. In that connection, the suggestion was made that such a diplomatic conference might present a good opportunity to consider a possible revision of the limits of liability and the provisions pertaining to units of account in the United Nations Convention on the Carriage of Goods by Sea, 1978 (hereafter referred to as the Hamburg Rules) and the United Nations Convention on International Multimodal Transport of Goods. In support of that suggestion, it was pointed out that such an effort might constitute a first step that might eventually lead to a greater degree of harmony of such clauses in other transport conventions as well.

31. In response to the above suggestion, the concern was expressed that the possibility that a convention might be revised might cause States that were considering becoming a party to the convention to postpone their decision on ratification or accession. It was agreed that at present there was no need to decide on that suggestion and that it might be taken up at a later stage. Since it was felt that detailed information on the liability limits and units of account used in the various transport conventions could be useful to the Commission, the Secretariat was requested to prepare an analytical compilation of such provisions for the twenty-second session.

## INTERNATIONAL COUNTERTRADE

32. At its nineteenth session in 1986, the Commission, in the context of its discussion of a note by the Secretariat entitled "Future work in the area of the new international economic order" (A/CN.9/277), considered its future work on the topic of countertrade. There was considerable support in the Commission for undertaking work on the topic, and the Secretariat was requested to prepare a preliminary study on the subject. 7/ At the current session, the Commission had before it a report entitled "Preliminary study of legal issues in international countertrade" (A/CN.9/302), which contained a description of contractual approaches to countertrade and an enumeration of some of the more important legal issues involved in that type of trade.
33. Divergent views were expressed as to whether work should be continued in the area. On the one hand, there was broad support for continuing the work. It was noted that an appreciable share of international trade was conducted by the use of countertrade arrangements and that such arrangements gave rise to legal issues to which parties often did not find optimal contractual solutions. It was considered that the most appropriate course of action would be to draw up a legal guide that would discuss legal issues typical of countertrade contracts and would provide assistance in drawing up such contracts. For example, it could provide advice on the contractual forms appropriate for countertrade transactions or on the relationship between contracts forming part of such a transaction.
34. On the other hand, reservations were expressed regarding the usefulness of preparing such a legal guide. It was noted that such work by the Commission might duplicate work by other organizations, in particular the work of the Economic Commission for Europe and the Association of State Trading Organizations in Developing Countries. Some of the representatives expressing such reservations suggested that work in the area be discontinued. Others were of the view that the Commission should review the scope and concept of the work of other organizations in the area and, in connection with that review, decide on the scope and concept of any work by the Commission. However, in response, it was said that the work of the Commission would have particular merit in view of its global representation and the wide distribution of the results of its work.
35. After discussion, the Commission decided that it would be desirable to prepare a legal guide on drawing up countertrade contracts. It was considered, however, that such a legal guide should not duplicate the work of other organizations. The Commission requested the Secretariat to prepare for the next session of the Commission a draft outline of the possible content and structure of a legal guide on drawing up countertrade contracts in order for it to decide what future action might be taken.

## CHAPTER V

### PROCUREMENT

36. At its nineteenth session in 1986, the Commission decided to take up the topic of procurement and it entrusted the subject to the Working Group on the New International Economic Order. 8/ The Working Group is scheduled to hold its tenth session at Vienna, from 17 to 28 October 1988, at which time it will commence its work on the topic.

37. The Secretary of the Commission informed the Commission that the Secretariat had convened a meeting of a group of experts at Vienna from 7 to 11 December 1987 to advise it on the preparation of the documentation for the Working Group. At its upcoming session, the Working Group might be expected to outline the nature of any work that might be undertaken in the field. One possible recommendation might be for the Commission to prepare and adopt a set of principles on public procurement to which States would be encouraged to conform in formulating their national procurement codes or regulations. The Working Group might also anticipate that, once an agreed set of principles had been established, the Commission might prepare a model procurement code based upon those principles.

38. The Commission took note with appreciation of the preparatory work thus far undertaken by the Secretariat and requested the Working Group to proceed with its work expeditiously.

## CHAPTER VI

### FUTURE PROGRAMME OF WORK

39. At its twentieth session in 1987, the Commission decided that at its twenty-first session it should engage in a general discussion of the future work of the Commission for the medium term. 9/ In response to a request of the Commission, a note by the Secretariat was submitted to serve as a basis for such a discussion. The note set forth the topics on which the Commission was currently preparing a draft legal text with a projected time schedule for completion. It also indicated topics that the Commission might consider at the current session with a view to determining whether they should be placed on the programme of work (A/CN.9/300). In order to facilitate discussion at the session, the topics of stand-by letters of credit and guarantees and of countertrade, on which the Commission had previously requested a preliminary study, were considered in substance both under separate agenda items and under the item regarding the planning for future work.

40. It was suggested in the note by the Secretariat that the Commission might wish to consider whether the current developments in regard to transport techniques and transport documentation, and the fact that the International Maritime Committee (IMC) was preparing draft rules on sea waybills and on electronic waybills that might be approaching completion within the next year, would make it desirable for the Commission to engage in a general review of the subject of transport documents at its twenty-second session. Such a review might encompass a review of the IMC text. The review might also be conducted with a view to determining whether the Commission might make a further contribution in the field of transport documents.

41. Different views were advanced in respect of that suggestion. According to one view, the Commission had had a long-term interest in transport documents and a review of the subject in 1989 would be appropriate. Since the principal item on the agenda would be the consideration of the draft Convention on the Liability of Operators of Transport Terminals in International Trade, the delegations to the session of the Commission would include experts in transport law. Another view was that the agenda for the twenty-second session should not include items that might be time-consuming, thereby avoiding the question of whether there would be sufficient time for proper consideration of the draft Convention.

42. After discussion, the Commission decided to request the Secretary-General to prepare a report for the twenty-second session on current problems with the law governing transport documents in the light of developments in transport techniques and transport documentation. The action to be taken on the report would depend on its content and on the time available at the session. The Commission was in agreement that submission of the report and its possible consideration at the twenty-second session must not be allowed to jeopardize the adoption of the draft Convention.

43. The Secretary of the Commission reminded the Commission that it had played an important role in the preparation of the 1974 revision by ICC of the Uniform Customs and Practice for Documentary Credits and a lesser, though still significant, role in the preparation of the 1983 revision. He noted that it could be expected that there would be another revision adopted by ICC around 1993. Consequently, in anticipation of the commencement of that revision, the secretariat was planning to submit to the Commission at its twenty-second session a report on the legal questions that had arisen in regard to the current (1983) version.

44. As envisaged in the report of the programme of work of the Commission (A/CN.9/300, para. 22), the Commission discussed what additional subjects might be included in its work programme for the next 5 to 10 years. It was felt that a general discussion on possible subjects could provide an indication of the future direction of the activities of the Commission as a formulating agency, in addition to its functions relating to co-ordination, promotion, training and assistance. It was emphasized that the question of planning the future work of the Commission was a matter of primary importance for the Commission's role as the lead formulating agency in the field of international trade law.

45. Various topics were suggested for study by the Secretariat and for possible inclusion in the future programme of work. It was agreed that any later decision on such inclusion should take into account such factors as the amount of current work of the Commission, the limited resources available to the Secretariat and the need to avoid duplication of the work of other organizations.

46. One proposal was to examine the need to provide for the legal principles that would apply to the formation of international commercial contracts by electronic means, and particularly through the medium of visual display screens. Such a study might include the formation of contracts for special transactions relating, for example, to securities - including bonds, shares or other instruments - to commodities and to foreign exchange.

47. The proposal received wide support. It was noted in particular that there currently existed no refined legal structure for the important and rapidly growing field of formation of contracts by electronic means. Future work in that area could help to fill a legal void and to reduce uncertainties and difficulties encountered in practice. Such an effort could benefit from the knowledge and expertise gathered by the Commission and its secretariat in the related field of electronic funds transfers. The Commission requested the Secretariat to prepare a preliminary study on the topic.

48. Another proposal was that the Commission examine the desirability and feasibility of preparing a model law on the promotion and protection of foreign investment. It was noted that the topic was of particular and considerable importance to developing countries. However, the proposal was opposed on the ground that a model law would be of limited usefulness since the investment legislation of a State depended on the specific economic situation and policies, which often changed within a short span of time.

49. Still other proposals related to topics that might be dealt with in one or more protocols supplementing the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (hereafter referred to as the United Nations Sales Convention). One such topic was the regulation of liquidated damages and penalty clauses in the international sale of goods. It was thought that a uniform regulation in the field would be desirable. The proposal was opposed on the ground that, in the light of the difficulties encountered by the Commission when preparing the Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance (1983), it was unrealistic to expect success from a renewed attempt.

50. Another topic relating to the international sale of goods was the retention of property by use of reservation of title clauses. The proposal was limited to the relationship between buyer and seller, thus excluding the area of third-party

rights. The proposal was opposed on the ground that the crucial area where uniformity was desirable was precisely that of third-party rights, particularly in the event of bankruptcy. Referring to work previously undertaken by the Council of Europe, it was stated that insurmountable problems arose from the existing disparity and changes of national bankruptcy laws. Yet another topic relating to the international sale of goods was an optional legal régime for quality warranties given by the seller.

51. A further suggestion was that the Commission consider the preparation of general conditions for production co-operation or joint production and for trade co-operation agreements relating to scientific and technological matters. Another suggestion was that the Commission consider the preparation of a convention on judicial co-operation and assistance in arbitration matters, covering, for example, service of documents and taking of evidence.

52. Some support was expressed for the following three areas, which at one time or another had been suggested or studied by the Commission: joint ventures, product liability and unfair competition.

## CHAPTER VII

### CO-ORDINATION OF WORK

53. The Commission had before it a report of the Secretary-General that set forth a register of international organizations engaged in activities in the field of international trade law (A/CN.9/303). The report concentrated on those organizations that were formulating agencies, although it included some organizations that were particularly important to the development of international trade law in other ways. The survey did not claim to be exhaustive, especially with regard to trade associations. However, an attempt had been made to include the work of those trade associations that developed normative texts, including general conditions and standard contracts, intended for relatively widespread use. Information included in the report related to the membership of the organizations, their nature and general rules and an overview of their activities related to international trade law, particularly those of relevance to the work of the Commission.

54. The Commission welcomed the report and considered that the type of information contained in it was useful in the implementation of its mandate to co-ordinate the work of other international organizations. It was suggested that at each of its sessions the Commission should devote sufficient attention to such co-ordination so as to avoid duplication of efforts among international organizations as well as conflicts between the results of their work. The observation was made that co-ordination among international organizations depended in large measure on the co-ordination undertaken by individual Governments among the various government ministries and branches active in different international organizations.

55. The observer for the International Institute for the Unification of Private Law (UNIDROIT) expressed satisfaction over the work of the Working Group on International Contract Practices on the draft Convention on the Liability of Operators of Transport Terminals in International Trade, work that had been begun by a special study group of UNIDROIT and subsequently taken over by the Commission. He noted that the draft Convention had received many favourable comments. He also noted that, in view of the difference in structure and working methods of the Commission and UNIDROIT, there might be other topics on which the work of the two organizations could be complementary. In particular, it might be desirable to co-operate in the dissemination and promotion of international legal texts as well as in fostering the uniform interpretation of such texts. Document A/CN.9/312 on collection and dissemination of information on the interpretation of UNCITRAL legal texts contained useful suggestions in that regard. He added that a congress entitled Uniform Law in Practice, held in September 1987 in Rome, had provided ample evidence of the need for the collection and dissemination of international legal texts and of the court and arbitral decisions interpreting them.

56. As to the current work of UNIDROIT, the observer for UNIDROIT referred to the project on general principles governing international commercial contracts. He informed the Commission of the preparations for the diplomatic conference, to be held in May 1988 at Ottawa on the invitation of the Government of Canada, entrusted with the preparation of a convention on international financial leasing and a convention on international factoring.

57. The Secretary-General of the Hague Conference on Private International Law recalled the excellent co-operation between the United Nations and the Hague Conference in preparing for the diplomatic conference on the law applicable to contracts for the international sale of goods, held in October 1985. After the diplomatic conference, the United Nations Secretariat had provided a translation of the Convention into Arabic, Chinese, Russian and Spanish, for which he wished once again to express his appreciation.

58. He informed the Commission that a special commission of the Hague Conference that had met in January 1988 had made several recommendations regarding future topics of work to the sixteenth regular diplomatic session of the Conference, which would meet in October 1988. Among the topics that should have priority were the law applicable to contracts of licence and know-how and the law applicable to certain aspects of unfair competition and, in that connection, he noted the work done in the area by the United Nations Conference on Trade and Development (UNCTAD). Other possible future topics of work were the law applicable to negotiable instruments, a topic connected with the work of the United Nations on the draft Convention on International Bills of Exchange and International Promissory Notes; the law applicable to the contract of transport; conflict-of-laws issues in the area of trans-border flow of data, among which were issues of the electronic transfer of funds; and the law applicable to contractual obligations in general. He also indicated that conflict-of-laws issues relating to product liability cases would be considered with a view to establishing whether the Convention on this topic, which had been prepared by the Hague Conference in 1973 and which had entered into force among five States, should be supplemented or modified.

59. The observer for the Asian-African Legal Consultative Committee (AALCC) spoke of the importance of the Commission, as the core legal body in the United Nations system in the field of international trade law, for the developing countries. He noted that the close working relations between the two organizations had led to the inclusion of items of mutual interest in their respective work programmes. Moreover, special emphasis had been laid in AALCC on the work of the Commission by making the report on the work of the Commission a regular feature at the sessions of AALCC.

60. The AALCC observer gave a detailed description of the fruitful co-operation between the Commission and AALCC in the area of international commercial arbitration. He referred to discussions in AALCC in 1976 on certain aspects of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) and an ensuing recommendation of AALCC to the Commission that had led the Commission to commence work on the preparation of the UNCITRAL Model Law on International Commercial Arbitration. The UNCITRAL Model Law provided a useful basis on which national arbitration legislation should be patterned in the future so as to remove the various difficulties encountered in the field of international commercial arbitration. AALCC continued to promote the acceptance of the UNCITRAL Model Law in the States members of AALCC. At its 1986 session at Arusha, United Republic of Tanzania, in 1986, AALCC had reminded its member States that they had seldom been the seat of international arbitrations because their laws on arbitration often contained rules that were inappropriate for international cases and that, if they were to promote the holding of such arbitration in their territories, they should review and revise their legislation on the basis of the Model Law. A number of States in the Asian and African regions had adopted, or initiated steps towards adopting, legislation based on the UNCITRAL Model Law.

61. Information was presented on the activities of the Council for Mutual Economic Assistance (CMEA) regarding its efforts for legal standardization. A CMEA Standing Commission on legal issues was revising certain existing legal texts or was preparing new legal texts, such as general conditions as well as legal guides and model contracts. The Standing Commission was revising mandatory rules in the form of general conditions established within CMEA on the delivery of goods, technical service, assembly, specialization and co-operation, and was preparing new ones on scientific and technological co-operation. The Standing Commission had also undertaken a comparative study of the 1980 United Nations Convention on Contracts for the International Sale of Goods and the comparable legal texts enacted within CMEA.

62. The observer for the UNCTAD/GATT International Trade Centre (ITC) stated that the activities of ITC concerning technical co-operation touched upon or had to take into account legal aspects of international trade. As a result, ITC had launched a subprogramme entitled Legal aspects of foreign trade, which aimed to fill an information gap and to create the awareness, mainly through training activities, that trade promotion organizations should improve their legal services. To that end, ITC had published a manual on legal aspects of foreign trade.

63. The Commission was informed that the International Law Association would hold its next international conference from 21 to 28 August 1988 at Warsaw. The conference would consider, among other topics, a report prepared by its working group on the new international economic order dealing with issues of indebtedness of developing countries.

64. The observer for the Latin American Federation of Banks (FELABAN) stated that the Federation would continue to disseminate in Latin America ideas and documents of the Commission and to participate in the activities of the Commission. He referred to the nature of the contributions of representatives of FELABAN to the work of the Commission and to its Working Group on International Payments. He informed the Commission of the discussion on the draft Convention on International Bills of Exchange and International Promissory Notes which had taken place at the sixth meeting of lawyers from Latin American banks at Santiago de Chile at the end of 1986. He reported on a symposium organized by the secretariat of the Commission, FELABAN and the Association of Banks of Mexico which had taken place from 1 to 3 June 1987 at Mexico City and at which lawyers from banks of Latin America had discussed the draft Convention on International Bills of Exchange and International Promissory Notes and legal issues of electronic funds transfers. He also reported on a seminar on international commercial arbitration organized by the Bar Association of Costa Rica and Columbia University, New York, which had taken place from 3 to 5 March 1988 at San José, and at which one of the themes had been the UNCITRAL Model Law on International Commercial Arbitration. He announced that FELABAN would hold its seventh meeting of lawyers from Latin American banks from 30 May to 1 June 1988 in Costa Rica. The discussion at that meeting would include the topics of international payments and international commercial arbitration.

## CHAPTER VIII

### STATUS AND PROMOTION OF TEXTS OF THE COMMISSION

#### A. Status of conventions

65. The Commission considered the state of signatures, ratifications, accessions and approvals of conventions that were the outcome of its work, that is, the Convention on the Limitation Period in the International Sale of Goods (New York, 1974) (hereafter referred to as the Limitation Convention), the Protocol amending the Limitation Convention (Vienna, 1980); the Hamburg Rules; and the United Nations Sales Convention. The Commission also considered the status of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), which, although it had not emanated from the work of the Commission, was of particular interest to it with regard to its work in the field of international commercial arbitration. In addition, the Commission took note of the jurisdictions that had enacted legislation based on the UNCITRAL Model Law on International Commercial Arbitration. The Commission had before it a note by the Secretariat on the status of those conventions and of the Model Law as of 19 February 1988 (A/CN.9/304). It also received oral information on developments subsequent to that date.

66. The Commission noted with satisfaction that, since the last session of the Commission, the United Nations Sales Convention, which entered into force on 1 January 1980, had received an additional five ratifications or accessions from Austria, Finland, Mexico and Sweden, as reported in document A/CN.9/304, and from Australia, which had ratified the Convention in March 1988, bringing the total number of States parties to 16. The representative of the Netherlands reported that, at the meeting of States parties to the two 1964 Hague Conventions (i.e., the Convention relating to a Uniform Law on the International Sale of Goods and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods) held at Vienna on the occasion of the Commission's twentieth session, in August 1987, the attitude of the States present had been so encouraging towards the United Nations Sales Convention that the Government of the Netherlands had decided to begin the legislative process leading to its ratification. The observer for the Federal Republic of Germany announced that his Government had begun the preparation of the legislation to authorize ratification of the Convention. Representatives and observers of a number of other States reported that the Convention was under active study in their countries. In the light of those developments, the expectation was expressed that, within a few years, at least 40 or 50 States would become parties to the Convention.

67. The Commission expressed its great pleasure that, with the accession of Mexico to the Limitation Convention and to the Protocol amending it, the Convention would come into force on 1 August 1988 in its amended form between Argentina, Egypt, Hungary, Mexico and Zambia and in its unamended form between those five States and Czechoslovakia, the Dominican Republic, Ghana, Norway and Yugoslavia. The representatives of several States reported that the Convention was under study in their countries as well.

68. The Commission engaged in a long discussion about the expectations in respect of the Hamburg Rules. It was noted that with the accession of Botswana the Hamburg Rules had 12 of the 20 States necessary for it to come into force. The representatives of Nigeria and Sierra Leone reported that their Governments

expected to ratify or accede to the Hamburg Rules before the end of 1988. The representatives of France and Italy informed the Commission that parliamentary approval for ratification or accession had been given in both States and that the ministries concerned were studying the possibility of ratifying or acceding to the Hamburg Rules. A number of representatives stated that previous decisions taken in their countries not to become party to the Hamburg Rules were being reconsidered in the light of new developments. The Secretary of the Commission stated that it was the expectation of the secretariat that by the end of 1989 at least 20 States would have ratified or acceded to the Hamburg Rules, thus enabling them to come into force. He noted in that regard that the movement from the 1924 Hague Rules to the Hamburg Rules was already clear. In the 10 years since the diplomatic conference at which the Hamburg Rules had been adopted, only two States had become party to the Hague Rules, and one of them had subsequently acceded to the Hamburg Rules. In contrast, 12 States had already become party to the Hamburg Rules and, as already announced, others soon would as well.

69. The Commission was reminded that the Hamburg Rules had been prepared at the express request of the developing countries. The current legal régime of the Hague Rules was considered to be unfair to the owners of cargo, and developing countries were more apt to represent such interests than to represent the owners of the carriers. The Commission was further reminded that in the drafting of the Hamburg Rules great care had been taken to achieve a careful balance of interests. While adoption of the Hamburg Rules would benefit the owners of cargo in contrast to the current situation, it would do so by instituting a fair and equitable liability régime in keeping with modern transport technology and consistent with other transport conventions. It was further noted that the Hamburg Rules contained many technical changes in the law that would be of benefit to the owners and operators of carriers.

70. It was noted that the opposition to the Hamburg Rules had centred on the argument that the shift in liability from cargo owner to carrier would lead to an increase in costs to the carrier, and therefore to increased freight rates, without assurance that there would be a corresponding decrease in cargo insurance. In that regard, attention was drawn to a recent study by UNCTAD on the economic and commercial implications of the entry into force of the Hamburg Rules, wherein it was concluded that adoption of the Hamburg Rules would have minimal economic and commercial consequences. <sup>10/</sup> It was also noted in the Commission that once the Hamburg Rules came into force they would govern carriers from all countries, since the Hamburg Rules applied to all contracts of carriage of goods by sea between two States if the port of loading, the port of discharge, the optional port of discharge or the place where the document of contract had been issued was located in a contracting State, or if the contract of carriage stated that the Hamburg Rules applied. The nationality of the carrier was irrelevant to the application of the Rules. Therefore, once the Hamburg Rules came into force, carriers from all countries would have to take out insurance and make the other necessary adjustments in regard to some of the cargo they carried. As a result, there would be less reason for them to wish to continue to be governed by the Hague Rules in regard to the remainder of the cargo they carried.

71. The Commission was informed that, subsequent to the issuance of document A/CN.9/304, Nigeria had adopted legislation based on the UNCITRAL Model Law on International Commercial Arbitration, bringing to three the total number of States that had adopted legislation based on the Model Law. Representatives of several States informed the Commission that legislation based on the Model Law was under study in their countries.

72. The Commission noted that document A/CN.9/304 showed that an additional two States, Cameroon and Costa Rica, had ratified or acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and it was informed that, subsequent to the issuance of the document, Bahrain had acceded to the Convention, bringing the total number of States parties to 76. The Commission expressed its satisfaction with the steady increase in membership of the Convention, noting that in each of the 30 years since the Convention was first ratified in 1959, with the single exception of 1963, at least one State had ratified or acceded to it. The Commission expressed the hope that those States which had not already done so would consider ratifying or acceding to the Convention.

#### B. Promotion of texts of the Commission

73. The Commission at its twentieth session "was in agreement that an increased priority should be given to efforts by the secretariat to promote the adoption and use of the texts emanating from the work of the Commission". <sup>11/</sup> The Commission had before it at the current session a report of the Secretary-General on the promotion of texts emanating from the work of the Commission (A/CN.9/305).

74. The report set forth some of the factors that affected the adoption by States of the UNCITRAL texts and suggested that many of them were common to all conventions on private law matters. The report showed in a table the high correlation between past or present membership in the Commission and the adoption of one or more of the texts emanating from its work, and suggested reasons why that correlation might exist. The report also indicated actions taken or contemplated by the Secretariat to promote the UNCITRAL texts.

75. One of the actions taken by the Secretariat was the preparation of four short explanatory notes, for promotional purposes, on the Hamburg Rules (A/CN.9/306), the United Nations Sales Convention (A/CN.9/307), the Limitation Convention (A/CN.9/308) and the Model Law (A/CN.9/309). The notes, of about 10 pages each, contained a short history of the texts and a brief description of their basic features.

76. The Commission was in general agreement that in a given State the primary activities necessary to promote adoption of the texts emanating from the work of the Commission had to be the responsibility of individuals and organizations of that State.

77. In that regard, mention was made of the important role of representatives to the Commission. They were in the best position to bring to the attention of their Governments the advantages to be derived from the adoption of the UNCITRAL texts. It was also suggested that they were well placed to encourage other States, and particularly those from the same region or with which their country had substantial trade, to adopt the UNCITRAL texts.

78. In respect of the promotional efforts that might be undertaken by the secretariat, it was agreed that most had been set forth in the report. The four notes prepared by the Secretariat on the UNCITRAL texts (A/CN.9/306-309) were said to be a great aid in the promotion of the texts. They provided an explanation of the texts that was sufficiently detailed to be useful but sufficiently concise so that busy officials could be expected to read them. They would also be a useful resource in the preparation of official reports on the UNCITRAL texts.

79. It was stated to be of great importance that members of the Secretariat seize every possible opportunity to contact the relevant ministry officials in individual countries.

80. The Commission agreed with the suggestion that one of the more useful ways to promote the adoption of the UNCITRAL texts was the holding of seminars similar to the one scheduled to be held in Lesotho in 1988. Further discussion on the subject was postponed until consideration of the agenda item on training and assistance (see paragraphs 87 to 97 below).

81. A suggestion was made that the Secretariat prepare a periodical or newsletter for the purpose of informing both legal experts and significant persons in trade and commerce of the work of the Commission. However, the prevailing view was that the suggestion was not feasible at the present time.

82. It was recognized that the current financial situation of the Organization made it difficult for the Secretariat to engage in all of the promotional activities that were desirable. There was general agreement with the conclusion reached in the report of the Secretary-General that the promotional activities of the Secretariat must be designed to achieve the maximum results with the minimum expenditure of resources (A/CN.9/305, para. 51). It was also pointed out, however, that the expenditure of a relatively small amount of additional resources for the promotion of texts already prepared by the Commission at substantial cost to the Organization would be a particularly cost-effective means of obtaining maximum value for the work and expense already incurred.

### C. Promotion of the Legal Guide

83. The Commission, at its twentieth session in 1987, had adopted the UNCITRAL Legal Guide on Drawing up International Contracts for the Construction of Industrial Works. 12/ When doing so, the Commission had requested the Secretary-General to take effective measures for the widespread distribution and promotion of the use of the Legal Guide.

84. The Commission had before it at the current session a note by the Secretariat setting forth the activities of the Secretariat to distribute and promote awareness of the Legal Guide (A/CN.9/310). The note indicated that the English version of the Legal Guide had been published on 5 February 1988 and that the five other language versions would soon appear. 13/

85. In addition to the official and other automatic distribution to Governments, depository libraries and the like, copies of the Legal Guide had been sent to the resident representatives of the United Nations Development Programme (UNDP) and to the World Bank and other development financing institutions with an invitation for them to bring it to the attention of the appropriate officials in the countries in which they carried out their activities. As the Legal Guide was a sales publication, it was also available from the Sales Section of the Organization, which would also be involved in its promotion.

86. It was noted that a distinction needed to be drawn between the activities that led to the physical distribution of the Legal Guide and those activities which would lead individuals active in drawing up international contracts for the construction of industrial works to read enough of the Legal Guide to become aware

of its value to them. In the latter connection, it was noted that reviews of the Legal Guide in professional journals and lectures on it in seminars and symposia involving professionals in the field were excellent means to elicit such interest. The Commission reiterated the view expressed at its twentieth session that, in addition to whatever activities the Secretariat might undertake, Governments, and particularly those of States members of the Commission, should take active steps to make the existence and value of the Legal Guide known in the relevant circles in their countries.

## CHAPTER IX

### TRAINING AND ASSISTANCE

87. The Commission had before it a note by the Secretariat in which were put forward certain proposals for future action by the Commission in respect of the programme of training and assistance (A/CN.9/311). In order to set the proposals in context, the note briefly reviewed earlier efforts in that sphere.

88. In the note it was indicated that, beginning with its first session, the Commission as well as the General Assembly had expressed the view that the activities of the Commission in the field of training and assistance were important. It was suggested, however, that relatively little had in fact been accomplished.

89. The most significant activity undertaken by the Commission had been the sponsoring of two seminars held at Geneva and Vienna on the occasion of the Commission's eighth and fourteenth sessions, in 1975 and 1981, respectively. On both occasions travel to the seminar of approximately 15 participants had been paid for by contributions from donor States. Although no formal evaluations had been made at the time, all evidence indicated that the participants had considered the seminars a success.

90. Nevertheless, in spite of the evident success of the symposia once they were held, the Secretariat had experienced severe administrative problems in organizing them. The primary difficulty had been that, since there had been no assured source of funds to finance them, it had become nearly impossible to plan for them in a proper manner. Many pledges had been received late and some of the pledges that had been received in sufficient time had been paid late, causing the expected award of several fellowships to be withdrawn. As a result of those difficulties, no further similar symposia had been organized, and since 1981 the activities of the Secretariat in the field had been largely restricted to co-sponsorship and participation in seminars and symposia organized by other organizations.

91. In the note by the Secretariat it was indicated that, following the decision of the Commission at its twentieth session in 1987, that training and assistance should be given higher priority than in the past, the Secretariat was organizing a seminar in Lesotho in 1988 for countries from southern and eastern Africa and planned to hold a seminar at Vienna for young scholars and practitioners from developing countries in connection with the Commission's twenty-second session in 1989. The seminar in Lesotho would be hosted by the Government of Lesotho and co-sponsored by the Preferential Trade Area for Eastern and Southern African States. The Commission was informed that pledges had been received from the Governments of Denmark, Finland, the Netherlands and Sweden for the seminar in Lesotho. While additional funds would be necessary in order to finance the seminar, the Secretariat was confident that they would soon be available.

92. The Commission was in agreement with the plans to hold the symposium in 1988 in Lesotho for countries from the subregion and to hold the symposium at Vienna in connection with the twenty-second session of the Commission in 1989. It expressed the hope that sufficient funds would be contributed in order for the two symposia to be carried out in the manner planned by the Secretariat.

93. There was general agreement with the conclusion expressed in the note by the Secretariat that, in order for the Commission and its secretariat to carry on a viable programme of training and assistance an adequate and assured source of funds had to be available. The Commission noted that difficulties were experienced in planning a seminar or symposium both when the funds were not available sufficiently in advance to make the necessary commitments and when the level of contributions was inadequate.

94. A discussion followed regarding the suggestion by the Secretariat that the Commission recommend to Governments, the relevant United Nations organs, organizations, institutions and individuals that they contribute on an annual basis to the trust fund already in existence to finance symposia organized by the Commission. It was recognized that the suggestion was essentially the same as that contained in General Assembly resolution 42/152, paragraph 5 (d), but the view was expressed that if such a recommendation was made by the Commission after discussion on the topic, it could be hoped to elicit a favourable response. A further view was expressed that any such recommendation should make it clear that contributions to the trust fund or any other contributions would be purely voluntary. Any target figure for total annual contributions, such as the amount of \$US 150,000 suggested by the Secretariat, would be only in the nature of a guideline and would not constitute a fixed goal. Furthermore, it was pointed out that a decision by a Government to make contributions on an annual basis would not constitute a commitment of the Government to continue to contribute to the trust fund, or to continue to do so in the same amount, in the future.

95. Several representatives expressed support for the suggestion and stated that their Governments would actively consider contributing to the trust fund on an annual basis. Other representatives stated that, while they could see the purpose behind the suggestion, it would be easier for their Governments to contribute for a specific symposium or other specific purpose rather than to the trust fund in general. Nevertheless, in the light of the willingness of some Governments to consider making such an annual contribution, those representatives were willing to bring the suggestion to the attention of their Governments.

96. A suggestion was made that the Secretariat prepare a report for the twenty-second session of the Commission on reasons, other than financial ones, that States might have for failing to contribute to the Commission's programme of training and assistance. This suggestion was not generally accepted.

97. After discussion, the Commission decided to invite Governments, the relevant United Nations organs, organizations, institutions and individuals to make voluntary contributions on an annual basis to the existing trust fund for UNCITRAL symposia.

## CHAPTER X

### COLLECTION AND DISSEMINATION OF INFORMATION ON INTERPRETATION OF LEGAL TEXTS OF THE COMMISSION

98. On the basis of a note by the Secretariat (A/CN.9/312), the Commission considered the need and means for collecting and disseminating court decisions and arbitral awards relating to legal texts emanating from its work, as had been suggested at previous sessions (A/CN.9/312, paras. 1 and 2). The discussion focused on decisions relating to the United Nations Sales Convention, which had entered into force on 1 January 1988. It was understood, however, that any agreed mechanism for collection and dissemination would be used also in respect of other legal texts already enacted or soon to be in force, i.e., the UNCITRAL Model Law on International Commercial Arbitration, the Limitation Convention and the Protocol amending it, as well as other legal texts upon their entry into force, in particular the Hamburg Rules.

99. The Commission agreed with the findings in the note as regards the need for collecting and disseminating relevant court decisions and arbitral awards. Information on the application and interpretation of the international text would help to further the desired uniformity in application and would be of general informational use to judges, arbitrators, lawyers and parties to business transactions.

100. The Commission accepted the suggestions in the note in respect of the means for collecting decisions (A/CN.9/312, paras. 15-18). In brief, the scheme of collection would be as follows. While the secretariat of the Commission would function as the focal point, it had to rely on the co-operation of the States parties to the Convention in question. Those Member States would be invited to assist in the gathering of court decisions and arbitral awards or to designate either an individual person or a specific organ or body as "national correspondent". It was noted that there existed a great variety as to the types of bodies or persons that a State might wish to entrust with the task (e.g., an official or section of the Ministry of Justice/Attorney-General's Department or of another Ministry, member of the council of law reporting, chamber of foreign commerce, research institute or a commercial law professor).

101. It was pointed out that the scheme would work effectively only with an appropriate organizational infrastructure for obtaining the relevant decisions from the courts of the country. Special considerations applied to arbitral awards, which constituted an equally important source of information on the application and interpretation of a commercial law convention. Their availability was limited by requirements of confidentiality and by the fact that arbitrations were being administered by a variety of arbitral institutions and often were conducted as pure ad hoc proceedings without any administrative link to an institution. The Secretariat was requested to develop, in co-operation with the national correspondents, suitable measures to obtain relevant arbitral awards (or anonymous excerpts thereof).

102. The decisions and awards thus collected would be forwarded in their original language and in full length to the Secretariat, which would ensure that they were stored and made accessible upon request to any interested person. At least initially, that task would be performed by the Secretariat itself. At a later

stage, consideration might be given to entrusting another organization with the task of operating a documentation centre, including the possibility of computer storage and access.

103. As regards the dissemination of relevant decisions, the Commission was agreed that the publication of the decisions in full and in the six official languages of the United Nations would far exceed the resources available to the Secretariat. As suggested in the note (A/CN.9/312, para. 20), the publication of full law reports might be undertaken, at least in one language, by a commercial publisher. It would be desirable if commercial publishers in various countries were willing to publish original decisions in full, regardless of whether they were in one of the official languages of the United Nations. In that connection, emphasis was placed upon the importance of free access to reported materials, unimpeded by copyright restrictions.

104. As regards the more limited scope of information that the Secretariat could disseminate, the Commission accepted the following suggestions set forth in the note (A/CN.9/312, paras. 21-26): The national correspondents designated by States would prepare, in one of the official languages, abstracts or headnotes of all national decisions involving the interpretation of a provision of the Convention; the precise format and structure of the abstracts would be agreed upon by the national correspondents at a meeting that might be convened in conjunction with the twenty-second session of the Commission; and the meeting would also be devoted to the preparation of a subject index or similar reference system and to a discussion of organizational matters concerning collaboration between the national correspondents and the Secretariat.

105. The abstracts prepared by the national correspondents, together with any references to publication of the decisions, would be translated into the other official languages by the Secretariat and published as part of the regular documentation of the Commission. Initially, the abstracts could be included in an annual report and later in more frequent reports, depending upon the volume of decisions.

106. It was suggested that only those decisions that had not been appealed to a higher court should be published.

107. The Commission considered a more far-reaching proposal, that of establishing a permanent editorial board. In addition to performing the above-mentioned tasks conferred upon the national correspondents, the board would proceed to a comparative analysis of the collected decisions and report periodically to the Commission at its annual sessions on the state of application of the Convention. The reports should evidence in particular the existence of uniformity or divergency in the interpretation of the individual provisions of the Convention as well as the existence of gaps in the provisions which might come to light in actual court practice. In support of the proposal, it was pointed out that the establishment of such a board, composed of representatives of States parties to the Convention, would ensure that in the comparative analysis of the material collected and the regular reporting on the state of application of the Convention equal attention would be given to the national experience of each State without giving any State or region a privileged position for political, economic or purely linguistic reasons.

108. In response to the proposal, various concerns were expressed. At the technical or organizational level, the institution of a permanent editorial board

was said to be too formalized and its operation appeared unwisely in view of the expected large number of States parties to the Convention that would wish to have a representative on the board. At a substantive level, the proposal was said to be too ambitious or at least premature. In particular, there was a risk that the interpretation given to the Convention in the analysed decisions of a particular jurisdiction would appear to represent an authoritative opinion of the member State although the collection of court decisions and arbitral awards was unlikely to be complete and the status and value of court judgements differed considerably from one legal system to another. Any such impression should be avoided, and reports on the interpretation of the Convention were to be for purposes of information only.

109. After deliberation, the Commission decided for the time being not to establish a permanent editorial board. It was understood that the proposal would be reconsidered in the light of experience gathered in the collection of decisions and the dissemination of information along the lines suggested in the note and adopted by the Commission. It was generally understood that any measures in the new undertaking would have to be reviewed and possibly adjusted in the light of such experience.

## CHAPTER XI

### WORKING METHODS OF THE COMMISSION

110. At its twentieth session, in 1987, the Commission decided that consideration should be given to several issues regarding its working methods and, in particular, the membership of the Commission and of its working groups. 14/ In order to facilitate the discussion, the Secretariat presented some background information concerning those issues in a note entitled "Working methods of the Commission" (A/CN.9/299).

#### A. Increase in membership of the Commission

111. In its first part, the note dealt with the issue of a possible increase in membership of the Commission. It recalled the discussions and decision on the increase in 1973 from the original level of 29 States to the current one of 36 States (General Assembly resolution 3108 (XXVIII)). It further recalled the 1977 decision that enabled non-member States to participate as observers in sessions of the Commission or its working groups. The note suggested that, in view of the latter decision and the ensuing practice, it had made little practical difference whether a State was present as a member State or as an observer. The primary consequence of membership appeared to be that a member State would be more likely than a non-member State to be represented at meetings of the Commission and its working groups and to be represented by experts in international trade law. Finally, the note suggested that a change in the number of member States in the Commission would have no financial implications for the United Nations.

112. During the discussion in the Commission, divergent views were expressed as to the advisability of recommending to the General Assembly an increase in the membership of the Commission. According to one view, there were good reasons for suggesting a substantial increase in membership which, if accepted by the Assembly at its forty-third session, could already be taken into account in the elections to be held at that session. An important reason was that membership in the Commission promised to enhance awareness of the work of the Commission and interest in its achievements. Active participation as a member State tended to further a favourable attitude towards acceptance of legal texts emanating from the work of the Commission and towards assistance in respect of other important functions, such as training and assistance. The proposal was further supported on the ground that a State was more likely to be represented at sessions of the Commission as a member than as an observer.

113. Moreover, the large number of States that had participated as observers and had made valuable contributions indicated that there existed a considerable interest beyond the 36 States that were currently members. With reference to the increase in 1973, it was noted that since that time membership in the United Nations had increased by 27 States, of which 9 were of the Latin American region. The proponents of the increase in membership of the Commission did not propose any definite number since it was for the General Assembly to agree on an equitable and politically acceptable number.

114. Another view was that it was not advisable to recommend an increase in membership at the current session. The valuable participation and contributions of

non-member States had shown that States with an interest in the work of the Commission had full opportunity for active involvement and appeared to have used that opportunity. The remaining difference between a member State and a non-member State was the domestic question of the likelihood of its being represented at sessions.

115. Moreover, it had not been established whether a desire or need for an increase in membership was felt in all regional groups alike and whether an increase in membership would in fact increase active participation by States hitherto not actively involved. In addition, it would be difficult to agree on a number that was politically acceptable as reflecting an equitable distribution. Finally, it was inopportune to recommend an increase of membership at a time when the United Nations was undergoing a process of review about possible restructuring.

116. After deliberation, the Commission agreed not to take a decision at the current session and to reconsider the matter at its twenty-third session in 1990.

#### B. Size and role of the working groups

117. The note by the Secretariat (A/CN.9/299) set forth, in its second part, the historical development of the working groups. It showed, in particular, that the working groups had been small in the early years and had gradually increased to the current size, with all member States of the Commission represented in all three working groups. It also showed that, while at the outset working groups had been entrusted with a particular task and then had been discontinued upon the completion of that task, in more recent years working groups had been treated as continuing bodies and had been assigned a new task once a previous task had been completed.

118. The note further described the varying role of the working groups in relation to the Commission as their parent body. During recent years, the differences between a session of the Commission and that of a working group were primarily procedural in nature. Finally, the note set forth some policy considerations that the Commission might wish to take into account in its deliberations on the appropriate size of a working group.

119. During its current session, the Commission did not engage in an exchange of views on the topic of the size and role of the working groups. It was felt that the topic was related to the topic of a possible increase in membership of the Commission and that, accordingly, its consideration should be postponed until the twenty-third session of the Commission.

## CHAPTER XII

### RELEVANT GENERAL ASSEMBLY RESOLUTIONS AND OTHER BUSINESS

#### A. General Assembly resolutions on the work of the Commission

120. The Commission took note with appreciation of General Assembly resolution 42/152 of 7 December 1987 on the report of the United Nations Commission on International Trade Law on the work of its twentieth session and of resolution 42/153 of 7 December 1987 on the draft Convention on International Bills of Exchange and International Promissory Notes.

#### B. Date and place of the twenty-second session of the Commission

121. It was decided that the Commission would hold its twenty-second session from 16 May to 2 June 1989 at Vienna.

#### C. Sessions of the working groups

122. It was decided that the Working Group on International Payments would hold its seventeenth session from 5 to 15 July 1988 in New York. It was decided that the Working Group might hold its eighteenth session from 5 to 16 December 1988 at Vienna, its nineteenth session from 10 to 21 July 1989 in New York and its twentieth session in the second half of 1989 at dates to be determined by the Secretariat if, in the judgement of the Working Group, its progress in respect of the preparation of the Model Rules on electronic funds transfers so warranted.

123. The Commission decided that the tenth session of the Working Group on the New International Economic Order would be held from 17 to 28 October 1988 at Vienna and that it might hold its eleventh session from 17 to 28 April 1989 in New York. It was agreed that the Working Group might hold its twelfth session in the second half of 1989 at dates to be determined by the Secretariat.

124. It was decided that the Working Group on International Contract Practices would hold its twelfth session from 21 November to 2 December 1988 at Vienna. While no session of the Working Group would be held in 1989 prior to the twenty-second session of the Commission, the Commission decided to authorize the holding of the thirteenth session of the Working Group in the latter half of 1989 if the programme of work so warranted.

#### Notes

1/ Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 17 were elected by the Assembly at its thirty-seventh session on 15 November 1982 (decision 37/308) and 19 were elected by the Assembly at its fortieth session on 10 December 1985 (decision 40/313). Pursuant to resolution 31/99 of 15 December 1976, the term of those members elected by the Assembly at its thirty-seventh session will expire on the last day prior to the opening of the twenty-second regular annual session of the Commission in 1989, while the term of

Notes (continued)

those members elected by the Assembly at its fortieth session will expire on the last day prior to the opening of the twenty-fifth regular annual session of the Commission in 1992.

2/ The elections took place at the 389th, 390th and 396th meetings, on 11 and 14 April 1988. In accordance with a decision taken by the Commission at its first session, the Commission has three Vice-Chairmen, so that, together with the Chairman and the Rapporteur, each of the five groups of States listed in General Assembly resolution 2205 (XXI), sect. II, para. 1, will be represented on the bureau of the Commission (see the report of the United Nations Commission on International Trade Law on the work of its first session, Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), para. 14 (Yearbook of the United Nations Commission on International Trade Law, vol. I: 1968-1970 (United Nations publication, Sales No. E.71.V.1), part two, I, A, para. 14).

3/ Official Records of the General Assembly, Forty-first Session, Supplement No. 17 (A/41/17), para. 230.

4/ Ibid., Forty-second Session, Supplement No. 17 (A/42/17), para. 304.

5/ Ibid., Thirty-eighth Session, Supplement No. 17 (A/38/17), para. 115.

6/ Ibid., Thirty-ninth Session, Supplement No. 17 (A/39/17), para. 113.

7/ Ibid., Forty-first Session, Supplement No. 17 (A/41/17), paras. 241 and 243.

8/ Ibid., para. 243.

9/ Ibid., Forty-second Session, Supplement No. 17 (A/42/17), para. 339.

10/ TD/B/C.4/315 (Part I), para. 99.

11/ Official Records of the General Assembly, Forty-second Session, Supplement No. 17 (A/42/17), para. 340.

12/ Ibid., para. 315.

13/ The Legal Guide was published as document A/CN.9/Ser.B/2 and also as a United Nations publication, Sales No. E.87.V.10.

14/ Official Records of the General Assembly, Forty-second Session, Supplement No. 17 (A/42/17), para. 344.

ANNEX

List of documents of the session

A. General series

- A/CN.9/296 Provisional agenda
- A/CN.9/297 Report of the Working Group on International Payments on the work of its sixteenth session (Vienna, 2-13 November 1987)
- A/CN.9/298 Report of the Working Group on International Contract Practices on the work of its eleventh session (New York, 18-29 January 1988)
- A/CN.9/299 Working methods of the Commission
- A/CN.9/300 Programme of work of the Commission
- A/CN.9/301 Stand-by letters of credit and guarantees
- A/CN.9/302 International countertrade: Preliminary study of legal issues in international countertrade
- A/CN.9/303 Co-ordination of work: Register of organizations
- A/CN.9/304 Status of Conventions
- A/CN.9/305 Promotion of texts emanating from the work of the Commission
- A/CN.9/306 United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg)
- A/CN.9/307 United Nations Convention on Contracts for the International Sale of Goods
- A/CN.9/308 Convention on the Limitation Period in the International Sale of Goods (New York, 1974)
- A/CN.9/309 UNCITRAL Model Law on International Commercial Arbitration
- A/CN.9/310 Activities of the Secretariat to distribute and to promote awareness of the UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works
- A/CN.9/311 Training and assistance
- A/CN.9/312 Collection and dissemination of information on interpretation of UNCITRAL legal texts
- A/CN.9/313 Bibliography of recent writings related to the work of UNCITRAL

B. Restricted series

A/CN.9/CRP.1  
and Add.1-8

Draft report of the United Nations Commission on  
International Trade Law on the work of its  
twenty-first session

C. Information series

A/CN.9/XXI/INF.1 List of participants