

REPORT
OF THE
UNITED NATIONS COMMISSION
ON
INTERNATIONAL TRADE LAW
on the work of its fourteenth session

19-26 June 1981

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-SIXTH SESSION

SUPPLEMENT No. 17 (A/36/17)



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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.

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INTRODUCTION

1. The present report of the United Nations Commission on International Trade Law covers the Commission's fourteenth session, held at Vienna from 19 to 26 June 1981.
2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the General Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

CHAPTER I

ORGANIZATION OF THE SESSION

A. Opening

3. The United Nations Commission on International Trade Law (UNCITRAL) commenced its fourteenth session on 19 June 1981. The session was opened on behalf of the Secretary-General by Mr. Erik Suy, the Legal Counsel.

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 December 1976 and 9 November 1979, are the following States: 1/

Australia,* Austria,* Burundi,* Chile,* Colombia,* Cuba,** Cyprus,** Czechoslovakia,** Egypt,* Finland,* France,* German Democratic Republic,* Germany, Federal Republic of,** Ghana,* Guatemala,** Hungary,** India,** Indonesia,* Iraq,** Italy,** Japan,* Kenya,** Nigeria,* Peru,** Philippines,** Senegal,** Sierra Leone,** Singapore,* Spain,** Trinidad and Tobago,** Uganda,** Union of Soviet Socialist Republics,* United Kingdom of Great Britain and Northern Ireland,* United Republic of Tanzania,* United States of America ** and Yugoslavia.**

* Term of office expires on the day before the opening of the regular annual session of the Commission in 1983.

** Term of office expires on the day before the opening of the regular annual session of the Commission in 1986.

1/ Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years, except that, in connexion with the initial election, the terms of 14 members, selected by the President of the Assembly by drawing lots, expired at the end of three years (31 December 1970); the terms of the 15 other members expired at the end of six years (31 December 1973). Accordingly, the General Assembly, at its twenty-fifth session, elected 14 members to serve for a full term of six years, ending on 31 December 1976, and, at its twenty-eighth session, elected 15 members to serve for a full term of six years, ending on 31 December 1979. The General Assembly, at its twenty-eighth session, also selected seven additional members. Of these additional members, the term of three members, selected by the President of the Assembly by drawing lots, would expire at the end of three years (31 December 1976) and the term of four members would expire at the end of six years (31 December 1979). To fill the vacancies on the Commission which would occur on 31 December 1976, the General Assembly, at its thirty-first session, on 15 December 1976, elected

5. With the exception of Burundi, Colombia, Cyprus, Peru, Senegal and the United Republic of Tanzania, all members of the Commission were represented at the session.

6. The session was also attended by observers from the following States: Argentina, Brazil, Bulgaria, Canada, China, Costa Rica, Gabon, Greece, Holy See, Lebanon, Luxembourg, Malaysia, Mexico, Netherlands, Norway, Pakistan, Panama, Poland, Portugal, Republic of Korea, Romania, Suriname, Switzerland, Tunisia, Turkey, Uruguay and Venezuela.

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

(a) United Nations organs

Economic Commission for Europe and the United Nations Industrial Development Organization.

(b) Specialized agency

International Monetary Fund

(c) Intergovernmental organizations

Bank for International Settlements, Council for Mutual Economic Assistance, Council of Europe, European Communities, Hague Conference on Private International Law, International Institute for the Unification of Private Law and Organization of American States.

(d) International non-governmental organization

International Chamber of Commerce.

(continued)

(or re-elected) 17 members to the Commission. Pursuant to resolution 31/99 of 15 December 1976, the new members took office on the first day of the regular annual session of the Commission immediately following their election (23 May 1977) and their term will expire on the last day prior to the opening of the seventh regular annual session of the Commission following their election (in 1983). In addition, the term of office of those members whose term would expire on 31 December 1979 was by the same resolution extended till the last day prior to the beginning of the regular annual session of the Commission in 1980. To fill the vacancies that would occur on that date, the General Assembly, at its thirty-fourth session, on 9 November 1979, elected (or re-elected) 19 members to the Commission. Pursuant to resolution 31/99 of 15 December 1976, the new members took office on the first day of the regular annual session of the Commission immediately following their election (14 July 1980) and their term will expire on the last day prior to the opening of the seventh regular annual session of the Commission following their election (in 1986).

C. Election of officers

8. The Commission elected the following officers by acclamation : 2/

Chairman: Mr. L. H. Khoo (Singapore)

Vice-Chairmen: Mr. R. Eyzaguirre (Chile)
Mr. E. Sam (Ghana)
Mr. I. Szász (Hungary)

Rapporteur: Mr. A. Duchek (Austria)

D. Agenda

9. The agenda of the session, as adopted by the Commission at its 243rd meeting on 19 June 1981, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda: tentative schedule of meetings.
4. International contract practices.
5. International payments.
6. International commercial arbitration.
7. New international economic order: industrial contracts.
8. Co-ordination of work.
9. Status of conventions.

2/ The elections took place at the 245th meeting on 22 June 1981 and the 247th meeting on 23 June 1981. 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 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 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)). As the election of the Chairman was postponed until 22 June 1981, the Secretary of the Commission functioned as the Chairman during the 243rd and 244th meetings on 19 June 1981. The Legal Counsel pointed out that this procedure should not set a precedent, and could only be regarded as a provisional measure adopted in order to expedite the work of the Commission.

10. Training and assistance in the field of international trade law.
11. Future work.
12. Other business.
13. Adoption of the report of the Commission.

E. Decisions of the Commission

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

F. Adoption of the report

11. The Commission adopted the present report at its 251st meeting, on 26 June 1981.

CHAPTER II

INTERNATIONAL PAYMENTS

A. Draft Convention on International Bills of Exchange and International Promissory Notes, and Uniform Rules on International Cheques ^{3/}

Introduction

12. The Commission had before it the report of the Working Group on International Negotiable Instruments on the work of its tenth session held at Vienna from 5 to 16 January 1981 (A/CN.9/196). The report set forth the progress made by the Working Group at this session on the preparation of a draft Convention on International Bills of Exchange and International Promissory Notes, and on the preparation of Uniform Rules on International Cheques. The proposed instruments would establish uniform rules applicable to an international instrument (bill of exchange, promissory note or cheque) for optional use in international payments. The Commission also had before it a note by the Secretariat entitled "Alternative methods for the final adoption of conventions emanating from the work of the Commission" (A/CN.9/204), which, *inter alia*, examined alternative methods for the final adoption of the draft Convention and the Uniform Rules.

13. The report of the Working Group noted that the Working Group continued its preliminary exchange of views on the Uniform Rules on International Cheques, and considered articles 34 to 86 and draft articles A to F relating to crossed cheques as drafted by the Secretariat (A/CN.9/WG.IV/WP.15 and A/CN.9/WG.IV/WP.19). The Working Group also examined legal issues arising outside the cheque submitted to the Working Group by the Secretariat (A/CN.9/196, paras. 191-199), issues relating to post-dated cheques (A/CN.9/196, paras. 200-203), and certain other issues (A/CN.9/196, paras. 204-207).

14. As regards its future work, the Working Group considered whether the draft Convention on International Bills of Exchange and International Promissory Notes and the Uniform Rules on International Cheques were to be drafted as separate texts, or consolidated in a single text. The Working Group expressed the opinion that, although there was considerable similarity between the law governing bills of exchange and promissory notes on the one hand, and cheques on the other, there were inherent in the use of cheques special features which distinguished these instruments from bills of exchange and promissory notes. One important feature was that the bill of exchange and promissory

^{3/} The Commission considered this subject at its 243rd and 244th meetings, on 19 June 1981.

note were primarily credit instruments, while the essential feature of a cheque was that it was a payment instrument. Moreover, in civil law countries the bill of exchange and promissory note on the one hand, and the cheque on the other, were traditionally seen as different instruments and were traditionally governed by separate legal texts. The Working Group therefore suggested that the Commission should agree on the adoption of two separate draft texts (A/CN.9/196, paras. 208-210).

15. The Working Group was of the view that it would probably be able to complete its work at its eleventh session, scheduled to be held in New York from 3 to 14 August 1981. The Working Group also noted that it would accord with past practice for the Secretary-General to transmit the draft texts adopted by the Working Group, upon their completion, together with a commentary, to Governments and interested international organizations for comments. In this connexion the Working Group suggested to the Commission that it might wish to consider, in the light of the comments received, whether, for purposes of accelerating the work, it should request the Working Group to study and consider those comments and report to the Commission (A/CN.9/196, paras. 211-213).

Discussion at the session

16. As regards the future work, there was general agreement that the draft Convention and the Uniform Rules should be drafted by the Working Group as two separate texts. There was also general agreement that the work should be completed by the Working Group as expeditiously as possible, and that if the work could not be completed at the eleventh session of the Working Group, a further session should be held. It was also agreed that, upon completion of the draft texts by the Working Group, they should be circulated, with a commentary, to all Governments and interested international organizations for comments. It was noted that sufficient time should be given to Governments and interested organizations for the purpose of examining these complex texts and formulating their comments. The view was also expressed that, in order to assist Governments to make their comments, the commentary which would accompany the texts should indicate, to the extent possible, the relationship of the provisions of the draft Convention and the Uniform Rules to the provisions of the Convention providing a Uniform Law for Bills of Exchange and Promissory Notes, Geneva, 1930, and the Convention providing a Uniform Law for Cheques, Geneva, 1931.

17. Different views were expressed as to the proper procedure to be followed after the comments were received. Under one view, the comments should be referred for consideration to the Working Group, which should revise the texts, if appropriate, in the light of the comments. Thereafter the revised texts, with a report by the Working Group on the action taken by it, should be submitted to the Commission, and the Commission could thereafter devote some time during a session to examine and approve the texts. In this context, a view was expressed that if the comments were made available to members of the Commission that were not members of the Working Group, before the Working Group commenced the review, it would assist those non-members of the Working Group in assessing the need to send observers to the Working Group session.

18. Under another view, the comments should be referred to the Commission, which should examine the texts in detail in the light of the comments, and revise them as appropriate.

19. In support of the former view it was noted that a revision of the draft texts in the light of the comments received could more expeditiously be undertaken by the Working Group than by the Commission. Furthermore, the prior revision of the texts by the Working Group would considerably expedite the work when the Commission came to consider the texts. It was suggested that a detailed examination of the two texts without such a prior review might result in the Commission having to devote an inordinate length of time to this work because of the highly complex and technical nature of the subjects. Accordingly, thought should be given at least to the advisability of adopting appropriate procedures which would, whilst not affecting the quality of the work, reduce the period of time needed for the conclusion of such a convention or conventions. It was noted that all States were free to attend sessions of the Working Group as observers, and that several States did so attend, and as a result the approval of the texts by the Working Group was one whose scope extended beyond the membership of the Working Group. Another suggestion in this context was for an enlargement of the membership of the Working Group for the purposes of revising the texts after the comments had been received.

20. In support of the latter view, it was noted that texts submitted by the Commission to the General Assembly, and later to a Diplomatic Conference, should carry the full approval of the Commission. Such approval could only be secured by a careful examination of the texts by the Commission itself. Furthermore, time would not be saved by a prior revision of the texts by the Working Group in the light of the comments received, as it would be difficult to prevent questions settled by the Working Group from being re-opened during the deliberations of the Commission. It was also observed that, although States not members of the Working Group could attend sessions of the Working Group as observers, many States, particularly the developing States, were unable due to budgetary constraints to send representatives as observers. Moreover, the apprehension that a careful examination of the texts by the Commission might take an inordinate length of time was unjustified.

21. After deliberation, the Commission agreed to defer its decision on the exact procedure to be followed after comments had been received and decided that it should revert to this question at its fifteenth session after the work had been completed by the Working Group. It was agreed, however, that after the texts had been finalized by the Commission, the appropriate procedure for their adoption as a convention or conventions would be through a Diplomatic Conference, and not through their adoption by the General Assembly upon a recommendation by the Sixth Committee.

Decision of the Commission

22. At its 244th meeting, on 19 June 1981, the Commission adopted the following decision:

The United Nations Commission on International Trade Law

1. Takes note with appreciation of the report of the Working Group on International Negotiable Instruments on the work of its tenth session;
2. Requests the Working Group to continue its work under its present terms of reference and to complete that work expeditiously;

3. Endorses the decision of the Working Group to hold its eleventh session in August 1981 and authorizes it to hold a further session if the work so requires;

4. Decides that the Working Group should draw up the draft Convention on International Bills of Exchange and International Promissory Notes, and the Uniform Rules on International Cheques, as separate texts and not as a consolidated text;

5. Requests the Secretary-General, after the completion of the texts by the Working Group, to circulate them, together with a commentary, to all governments and interested international organizations for their comments.

B. Universal unit of account for international conventions ^{4/}

Introduction

23. At its eleventh session the Commission decided that it "should study ways of establishing a system for determining a universal unit of account of constant value which would serve as a point of reference in international conventions for expressing amounts in monetary terms". ^{5/}

24. The proposal was examined by the UNCITRAL Study Group on International Payments at its meetings in 1978, 1979 and 1980. The Study Group was of the view that the most desirable approach was to combine the use of the Special Drawing Right (SDR) with a suitable index which would preserve over time the purchasing power of the monetary values set forth in the international conventions in question.

25. At its present session the Commission had before it a report of the Secretary-General entitled "Universal unit of account for international conventions" (A/CN.9/200) reflecting the view of the Study Group and containing an annex prepared by the Staff of the International Monetary Fund at the request of the Commission's Secretariat. That annex explained many of the considerations which had led to the Study Group's recommendation.

26. The report suggested that if the Commission agreed that it would be desirable to prepare such a provision for use in international conventions, it might wish to adopt the provision at its next session since several conventions for which such a provision might be appropriate were in the process of elaboration by other organizations.

^{4/} The Commission considered this subject at its 246th meeting, on 22 June 1981.

^{5/} A/CN.9/156; Report of the United Nations Commission on International Trade Law on the work of its eleventh session, Official Records of the General Assembly, Thirty-third Session, Supplement No. 17 (A/33/17), para. 67(c)(iii) (Yearbook of the United Nations Commission on International Trade Law, Vol. IX: 1978 (United Nations publication, Sales No. E.80.V.8) part one, II, A, para. 67 (c) (iii)).

Discussion at the session

27. There was general agreement that the erosion of the purchasing value of the maximum compensation recoverable under conventions which specify a limit of liability was a serious problem. It was recognized that as a result the limit of liability must be adjusted periodically.

28. Under one view no automatic adjustment formula should be adopted. It was stated that indexing contributed to inflation. Moreover, the erosion of currencies was not the only reason for changing the limit of liability. Technical changes, such as a change in the nature of the cargo carried, might also justify a change in the limit of liability. These factors could only be taken into account by a revision conference.

29. The view was also expressed that any provision which the Commission might adopt could be expected to be used only in connexion with new conventions and not in connexion with existing ones.

30. Under another view recent experience had shown such rapid generalized inflation that a revision conference would need to be held at least every five years for each convention in question if the limits of liability were not to deteriorate excessively. Only an automatic adjustment formula could be expected to work reasonably well in this situation.

31. There was no agreement on the nature of the automatic adjustment mechanism which might be used. Some concern was expressed for the problems of non-member States of the International Monetary Fund if an index were to be based on the SDR. It was pointed out that some provision similar to article 26 of the Hamburg Rules and based upon the gold value would be necessary in this regard. Moreover, in regard to the idea of using an index, some representatives reserved their position since the report had been received by them only in the course of the present session, and therefore could not be properly studied.

32. After discussion the Commission agreed to refer the matter to the Working Group on International Negotiable Instruments. The Working Group was requested to consider various possibilities in regard to the formulation of a unit of account of constant value and to prepare a text, if possible. The Secretary-General was requested to conduct such studies as seemed desirable in the light of the discussion in the present session of the Commission and to submit those studies to the Working Group.

C. Electronic Funds Transfer ^{6/}

Introduction

33. The Commission, at its eleventh session, included as an item in its programme of work the legal problems arising out of electronic funds transfer.^{7/} The work

^{6/} The Commission considered this subject at its 246th meeting, on 22 June 1981.

^{7/} Report of the United Nations Commission on International Trade Law on the work of its eleventh session, Official Records of the General Assembly, Thirty-third Session, Supplement No. 17 (A/33/17), para. 67(c)(ii) (Yearbook of the United Nations Commission on International Trade Law, Vol. IX: 1978 (United Nations publication, Sales No. E.80.V.8) part two, II, A, para. 67(c)(ii)).

was entrusted to the UNCITRAL Study Group on International Payments. At its thirteenth session the Commission requested the Secretariat to submit to it at its fourteenth session a progress report on the matter, so that it might give directions on the scope of further work after having considered the Study Group's conclusions. 8/

34. The Commission at its present session had before it a note by the Secretary-General entitled "Electronic funds transfer" (A/CN.9/199) which stated that, since the Study Group had not met between the thirteenth and fourteenth sessions of the Commission, the Secretariat was unable to submit to the Commission any information in addition to that previously submitted which would aid the Commission in giving directives on the scope of further work.

35. The report also stated that the Secretariat would request the Study Group at its next meeting in August 1981 to recommend to the Commission whether the Commission should undertake substantive work in this field at the present time, and, if so, what the nature of that work might be.

Action by the Commission

36. The Commission took note of the report.

8/ Report of the United Nations Commission on International Trade Law on the work of its thirteenth session, Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17), para. 163.

CHAPTER III

INTERNATIONAL TRADE CONTRACTS

A. Uniform rules on liquidated damages and penalty clauses ^{9/}

Introduction

37. At its twelfth session, the Commission decided that work should be undertaken directed to the formulation of uniform rules regulating liquidated damages and penalty clauses and entrusted the work to its Working Group on International Contract Practices, with a mandate to consider the feasibility of formulating uniform rules on liquidated damages and penalty clauses applicable to a wide range of international trade contracts. ^{10/}

38. At the present session, the Commission had before it the report of the Working Group on the work of its second session, held in New York from 13 to 17 April 1981 (A/CN.9/197). The report of the Working Group indicated that it had prepared a set of draft uniform rules on liquidated damages and penalty clauses (A/CN.9/197, annex), and had completed its mandate. The Working Group had, however, decided that the issue of the form that the rules might take should be left for decision by the Commission. It had also noted that, depending on the form that the rules might take, certain supplementary provisions might be needed, and that the Secretariat might be requested to draft such provisions (A/CN.9/197, paras. 46-48).

39. The Commission also had before it a report of the Secretary-General entitled "Question of co-ordination: direction of the work of the Commission" (A/CN.9/203), and a note by the Secretariat entitled "Alternative methods for the final adoption of conventions emanating from the work of the Commission" (A/CN.9/204). The former report, in considering the final form of texts which might be adopted by the Commission, inter alia, examined as an example the draft uniform rules adopted by the Working Group, and set forth the advantages and disadvantages of casting the rules in the form of a convention, a model law, or a recommendation (A/CN.9/203, paras. 114-122). The latter note considered the possible future procedure to be followed in respect of the draft uniform rules, and noted,

^{9/} The Commission considered this subject at its 244th meeting, on 19 June 1981.

^{10/} Report of the United Nations Commission on International Trade Law on the work of its twelfth session, Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17), para. 31.

inter alia, that if the form of a convention were decided upon, it might be possible for such convention to be adopted by the General Assembly on the recommendation of the Sixth Committee rather than by a diplomatic conference.

Discussion at the session

40. The discussion focused on the possible form of the draft uniform rules. Some support was expressed for the form of a convention, as it was the most effective type of unifying instrument. On the other hand, it was observed that the limited scope of the rules made a convention inappropriate. In this connexion the view was expressed that it would be of interest for the Commission to know whether the Sixth Committee would be prepared to devote a part of one of its annual sessions to an examination of the draft uniform rules, as that knowledge might be relevant to a determination of the form of the rules by the Commission.

41. Some support was also expressed for the form of recommendation. It was noted that the substantive work involved could be completed within the Commission itself. Furthermore, a recommendation could have a wide scope, being addressed both to States to make their law conform to the uniform rules, and to the business community to apply by agreement the uniform rules to the extent possible to their international contracts. On the other hand, it was pointed out that an agreement of the contracting parties in regard to the applicability of the rules might be ineffective, since they concerned matters which in many national laws were governed by mandatory provisions which differed from country to country.

42. The greatest support was expressed for the form of a model law. A model law had the advantage that it could later form the basis of a convention. As in the case of a recommendation, the substantive work involved could be completed within the Commission itself.

43. After deliberation, there was general agreement that a decision on the issue of form should be deferred to a later session. The procedure for the immediate future should be that the draft uniform rules, incorporating supplementary provisions to be drafted by the Secretariat, should be circulated to all Governments and interested international organizations, together with a commentary to be prepared by the Secretariat. In drafting the supplementary provisions, the Secretariat should take into account the relevant provisions of the Conventions which have emerged from the work of the Commission. The draft uniform rules, when circulated, should also be accompanied by a questionnaire seeking to elicit the views of Governments and international organizations on the most appropriate form for the rules.

Decision by the Commission

44. At its 244th meeting, on 19 June 1981, the Commission adopted the following decision:

The United Nations Commission on International Trade Law

1. Takes note with appreciation of the report of the Working Group on International Contract Practices on the work of its second session;

2. Congratulates the Working Group on the expeditious completion of the mandate entrusted to it;

3. Requests the Secretary-General:

- (a) To incorporate in the draft uniform rules on liquidated damages and penalty clauses prepared by the Working Group such supplementary provisions as might be required if the rules were to take the form of a convention or a model law;
- (b) To prepare a commentary on the draft uniform rules;
- (c) To prepare a questionnaire addressed to Governments and international organizations seeking to elicit their views on the most appropriate form for the uniform rules; and
- (d) To circulate the draft uniform rules to all Governments and interested international organizations for their comments, together with the commentary and the questionnaire;

4. Decides that, if the procedures set forth above are completed in time, the consideration of the draft uniform rules should be placed on the agenda of the fifteenth session.

B. Clauses protecting parties against the effects of currency fluctuations ^{11/}

Introduction

45. The Commission, at its twelfth session, had before it a report of the Secretary-General entitled "Clauses protecting parties against the effects of currency fluctuations" which described the commercial reasons for clauses designed to protect creditors against changes of the value of a currency in relation to other currencies and for clauses by which creditors seek to maintain the purchasing value of the monetary obligation under the contract (A/CN.9/164). The report examined the various kinds of clauses designed to accomplish these two results and considered the legal and policy framework in which such clauses operate in a selected number of countries.

46. The Commission, at its twelfth session, recognized that the subject was of current interest because of the floating of the major trade currencies. ^{12/} However, doubts were expressed whether it was possible for the Commission to regulate on a world-wide basis the content of clauses to eliminate most or all of the monetary risks involved in long-term contracts.

47. As a result, the Commission requested the Secretariat to carry out further studies in respect of clauses protecting parties against the effects of currency fluctuations.

^{11/} The Commission considered this subject at its 245th meeting, on 22 June 1981.

^{12/} Report of the United Nations Commission on International Trade Law on the work of its twelfth session, Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17), paras. 32-40.

48. At the present session the Commission had before it a report of the Secretary-General entitled "Clauses protecting parties against the effects of currency fluctuations" (A/CN.9/201) which noted that the Secretariat was currently studying the problems caused by currency fluctuations in two contexts:

- The creation of a universal unit of account of constant value for use in international conventions. Such a unit of account would be of relevance to some international contracts.
- Studies in respect of the price term in contracts for the supply and construction of large industrial works, including the clause on price revision and the clause on currency and rates of exchange. These studies are to be presented to the third session of the Working Group on the New International Economic Order.

Discussion at the session

49. It was pointed out that the fluctuation in value of the major trade currencies was a great problem for the developing countries as well as for the countries whose currencies were in use. Therefore, there was general agreement that the Secretariat should continue to study the question of currency fluctuation clauses and report at a future session of the Commission. It was also suggested that the Secretariat might expand the scope of its inquiry beyond the areas currently under study.

CHAPTER IV

INTERNATIONAL COMMERCIAL ARBITRATION

A. UNCITRAL Arbitration Rules : administrative guidelines ^{13/}

Introduction

50. The Commission, at its twelfth session, considered certain issues relevant in the context of the UNCITRAL Arbitration Rules. ^{14/} One issue was whether the Commission should take steps to facilitate the use of the Rules in administered arbitration and seek to prevent disparity in their use by arbitral institutions. The Commission, at that session, decided to request the Secretary-General:

"To prepare for the next session, if possible in consultation with interested international organizations, guidelines for administering arbitration under the UNCITRAL Arbitration Rules, or a check-list of issues which may arise when the UNCITRAL Arbitration Rules are used in administered arbitration." ^{15/}

51. Pursuant to this request, the Secretariat prepared, and submitted to the Commission at its thirteenth session, a note entitled "International commercial arbitration - issues relating to the use of the UNCITRAL Arbitration Rules and the designation of an appointing authority" (A/CN.9/189) which took into account the views expressed by the Commission and information obtained in consultative meetings with members of the International Council for Commercial Arbitration and representatives of the International Chamber of Commerce. The note suggested, and set forth, guidelines which could assist arbitral institutions in formulating rules for administering arbitrations under the UNCITRAL Arbitration Rules and which would encourage them to leave these Rules unchanged.

52. The Commission, at its thirteenth session, held a brief exchange of views during which support was expressed for the idea of preparing guidelines in the form of recommendations and for the approach taken in the draft guidelines. ^{16/} However, the Commission decided, in order to give representatives sufficient time to consult with interested circles, not to discuss the contents of the draft guidelines in detail and to postpone their consideration to the next session. ^{17/}

^{13/} The Commission considered this subject at its 248th meeting, on 23 June 1981.

^{14/} Report of the United Nations Commission on International Trade Law on the work of its twelfth session, Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17), paras. 57-66.

^{15/} Ibid., para. 71, subpara. 2 (a).

^{16/} Report of the United Nations Commission on International Trade Law on the work of its thirteenth session, Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17), paras. 110-111.

^{17/} Ibid., para. 113, subpara. 3.

Discussion at the session

53. The Commission discussed the desirability of issuing guidelines for administering arbitrations under the UNCITRAL Arbitration Rules and considered the draft recommendations set forth in the note by the Secretariat (A/CN.9/189).

54. The Commission, after deliberation, was agreed that the issuance of guidelines in the form of recommendations could serve a useful purpose in assisting institutions willing to act as appointing authority or in providing administrative services in cases conducted under the UNCITRAL Arbitration Rules. In support of this, it was stated that such guidelines might help to avoid disparity in the application of these Rules by different institutions and to enhance the parties' certainty as to what procedures to expect. Furthermore, it was agreed that such guidelines should be addressed not only to arbitral institutions but also to other bodies, e.g. chambers of commerce, which, too, might be willing to act as appointing authority or provide administrative services as envisaged under the guidelines.

55. As to the draft text of the guidelines prepared by the Secretariat (A/CN.9/189, paragraph 15), various amendments were submitted. Some of these amendments, and the discussion thereon, revealed a certain difference of opinion as to any effort to discourage institutions from adopting administrative procedures which would modify the UNCITRAL Arbitration Rules. Under one view, the guidelines should attempt to ensure, for the sake of uniform application and certainty of parties, that these Rules be left unchanged, to the extent possible. Under another view, the guidelines should not prevent institutions from adopting procedures which modify these Rules according to their specific institutional needs.

56. These latter concerns were primarily aimed at the situation where an institution uses the UNCITRAL Arbitration Rules as a model in adopting its own institutional rules and not so much at the situation where the institution merely adopts procedures for providing administrative services in cases to be conducted under the UNCITRAL Arbitration Rules. It was suggested in this connexion, that these two situations be more clearly distinguished and that the guidelines should deal primarily, if not exclusively, with the latter situation. It was agreed that the guidelines, whatever their final stand on this issue of modifications, should contain a recommendation to identify clearly any such modification by way of a reference to the modified provision of the UNCITRAL Arbitration Rules.

57. Other proposals submitted were specific amendments to the draft text of the guidelines aimed at clarifying matters and fully aligning the recommendations with the pertinent provisions of the UNCITRAL Arbitration Rules. It was also suggested that the guidelines state expressly that the services envisaged and the points mentioned therein were not intended to be exhaustive.

58. The Commission, after deliberation, was agreed that further consideration was needed of the amendments proposed and requested the Secretariat to revise the draft guidelines in the light of the views expressed during the discussion so as to enable it to adopt appropriate guidelines at its next session. In addition, it was requested that the explanations set forth in paragraphs 4 to 14 of document A/CN.9/189, if they were to be used as explanatory notes accompanying the final guidelines, be reformulated for that purpose.

Decision of the Commission

59. The Commission, at its 248th meeting, on 23 June 1981, adopted the following decision:

The United Nations Commission on International Trade Law

1. Decides that it would be desirable to issue guidelines in the form of recommendations to arbitral institutions and other relevant bodies, such as chambers of commerce, in order to assist them in adopting procedures for their acting as appointing authority or providing administrative services in cases to be conducted under the UNCITRAL Arbitration Rules;

2. Requests the Secretary-General to prepare, in the light of the views expressed during the discussion, a further note with a revised text of the draft guidelines and any explanations thereof, and to submit that note to the next session.

B. Model arbitration law ^{18/}

Introduction

60. The Commission, at its twelfth session, considered a report of the Secretary-General entitled "Study on the application and interpretation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)" (A/CN.9/168) and a note by the Secretariat entitled "International commercial arbitration - further work in respect of international commercial arbitration" (A/CN.9/169). ^{19/} The note suggested that the Commission commence work on a model law on arbitral procedure which could help to overcome most of the problems identified in the above study and to reduce the legal obstacles to arbitration.

61. The Commission decided, at that session, to request the Secretary-General:

- "(a) To prepare an analytical compilation of provisions of national laws pertaining to arbitration procedures, including a comparison of such laws with the UNCITRAL Arbitration Rules and the 1958 Convention;
- "(b) To prepare, in consultation with interested international organizations, in particular the Asian-African Legal Consultative Committee and the International Council for Commercial Arbitration, a preliminary draft of a model law on arbitral procedure, taking into account the conclusions reached by the Commission, and in particular:

^{18/} The Commission considered this subject at its 249th meeting, on 24 June 1981.

^{19/} Report of the United Nations Commission on International Trade Law on the work of its twelfth session, Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17), paras. 78-80.

- (i) That the scope of application of the draft uniform rules should be restricted to international commercial arbitration;
 - (ii) That the draft uniform law should take into account the provisions of the 1958 Convention and of the UNCITRAL Arbitration Rules;
- "(c) To submit this compilation and the draft to the Commission at a future session."20/

62. At its thirteenth session, the Commission had before it a note by the Secretariat entitled "Progress report on the preparation of a model law on arbitral procedure" (A/CN.9/190). 21/ In this note, the Secretariat set forth its initial work and referred to difficulties in obtaining the materials necessary for the preparatory work on this project. In order to assist the Secretariat in that regard, the Commission decided to invite Governments to provide the Secretariat with relevant materials on national legislation and case law, and pertinent treatises where available. 22/ The General Assembly included a similar appeal to Governments in its resolution 35/51 of 4 December 1980 (para. 12 (d)).

63. The Commission, at its present session, had before it a report of the Secretary-General entitled "Possible features of a model law on international commercial arbitration" (A/CN.9/207). The report, in its first part, deals with the concerns which should be met by the model law and with the principles which could underlie it. In its second part, it attempts to identify all those issues possibly to be dealt with in the draft model law. Those issues relate to the scope of application, the arbitration agreement, the arbitrators, the arbitral procedure, the award, and the means of recourse. The report suggests that the preparation of a model law would be timely and desirable in view of the manifold problems encountered in present arbitration practice and that this work, in view of the complexity of the issues, be entrusted to a Working Group.

Discussion at the session

64. The Commission took note of the report of the Secretary-General (A/CN.9/207) and considered the conclusions suggested therein. There was general support for the suggestion to proceed towards the drafting of a model law on international commercial arbitration. This was deemed desirable in view of the manifold problems encountered in present arbitration practice and of the need for a legal framework for equitable and rational settlement procedures for disputes arising out of international trade transactions. It was also stated in support that a model law could be of great value to all States, irrespective of their legal or economic system.

20/ Ibid., para. 81.

21/ Report of the United Nations Commission on International Trade Law on the work of its thirteenth session, Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17), paras. 114-116.

22/ Ibid., para. 117.

65. The Commission was also agreed that the report setting forth the concerns, purposes and possible contents of a model law would provide a useful basis for the preparation of a model law. While not discussing the issues in detail, the Commission considered the general direction and approach to be taken. It reaffirmed its decision that in preparing the model law due account be taken of the 1958 New York Convention and of the UNCITRAL Arbitration Rules. It was also suggested that every effort be made to take into account the conditions and interests, and meet the needs, of all States, in particular of developing countries. It was important to strike a reasonable balance between the interest of the parties to determine freely the procedure to be followed and the need for mandatory provisions ensuring fair and just proceedings.

66. There was general support for the suggestion that the work of preparing a draft model law be entrusted to a Working Group. It was decided to give that mandate to the Working Group on International Contract Practices which had completed its prior task.

67. Divergent views were expressed as to the desirable size of the Working Group. According to one view, the present composition of the Working Group on International Contract Practices (15 States) ^{23/} should be maintained in order to ensure efficient and expeditious work. In support of this view, it was noted that States not members of the Working Group were entitled to attend the sessions as observers and to actively participate in the deliberations pursuant to paragraph 10(c) of General Assembly resolution 31/99 of 15 December 1976. Under another view, the Working Group should be enlarged so as to consist, for example, of 21 States, in order to achieve a wider representation which would enable additional States to participate in view of the great interest in the project. It was noted, in support of this, that regular participation by a State as an observer might be less likely than if it were a member of the Group.

68. The Commission, while recognizing that these issues touched on questions of principle worthy of further consideration, decided to maintain the present size and composition of the Working Group on International Contract Practices. It was agreed that the composition of the Working Group might be re-examined at a future session when the need arose.

69. It was agreed, however, as a matter of principle, that the distribution of memberships in the Working Groups of the Commission should be equitable among the members of the Commission, while maintaining adequate representation of the different regions and of the principal economic and legal systems of the world and of developed and developing countries.

^{23/} The following States are members of the Working Group on International Contract Practices: Austria, Czechoslovakia, France, Ghana, Guatemala, Hungary, India, Japan, Kenya, Philippines, Sierra Leone, Trinidad and Tobago, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.

Decision of the Commission

70. At its 249th meeting, on 24 June 1981, the Commission adopted the following decision:

The United Nations Commission on International Trade Law

1. Takes note of the report of the Secretary-General entitled "Possible features of a model law on international commercial arbitration" (A/CN.9/207);
2. Decides to proceed with the work towards the preparation of a draft model law on international commercial arbitration;
3. Decides to entrust this work to its Working Group on International Contract Practices with its present composition;
4. Requests the Secretary-General to prepare such background studies and draft articles as may be required by the Working Group.

CHAPTER V

NEW INTERNATIONAL ECONOMIC ORDER ^{24/}

Introduction

71. The Commission had before it the report of the Working Group on the New International Economic Order on the work of its second session held at Vienna from 9 to 18 June 1981 (A/CN.9/198). The report sets forth the deliberations of the Working Group on the basis of the study by the Secretary-General entitled "Clauses related to contracts for the supply and construction of large industrial works" (A/CN.9/WG.V/WP.4 and Add.1-8).

72. The report noted that the Working Group had considered twelve out of the eighteen chapters of the study and that there still remained some thirty clauses which could be found in contracts for the supply and construction of large industrial works and which yet had to be studied by the Secretariat.

73. The Working Group requested the Secretariat to continue and complete its studies and agreed that the Secretariat should be given a discretion in regard to the organization of work, especially in regard to the selection of the additional topics suggested.

74. As regards its future work the Working Group discussed the various options, e.g. legal guide, model clauses, code of conduct, general conditions and conventions. The report noted that there was general agreement that for the time being work should be concentrated on the drafting of a legal guide and it was pointed out that such a guide could well include variants of model clauses whenever appropriate. It was also felt that the preparation of a legal guide would not exclude any further steps at a later stage if this would appear necessary. The formulation of a detailed legal guide covering turn-key and semi-turnkey contracts as well as their variants would be a first practical step in the direction of assisting developing countries in meeting their needs and aspirations. The Working Group entrusted the Secretariat with the drafting of the legal guide.

75. As regards clauses related to industrial co-operation the Working Group considered the note by the Secretariat entitled "Clauses related to industrial co-operation" (A/CN.9/WG.V/WP.5) and agreed that work on it be deferred till after the preparation of the legal guide on contractual provisions relating to contracts for the supply and construction of large industrial works.

76. The report also reflected the discussion concerning the next session of the Working Group. The wish was expressed that the Commission in deciding the dates of the next session should take into account the urgency of the project.

^{24/} The Commission considered this subject at its 250th meeting, on 24 June 1981.

Discussion at the session

77. The Commission expressed its appreciation to the Working Group, and its Chairman, Mr. Leif Sevón, for the above manner in which the work had been executed. There was also general agreement that the directions of the future work as decided by the Working Group should be approved. The report of the Working Group was approved.

78. Emphasis was laid on paragraph 14 of the report of the Working Group setting forth the general agreement of the Working Group that its work should be within the context of the basic principles of the new international economic order and in particular should be directed to meeting the needs and aspirations of the developing countries. A view was expressed that not only the needs but also the aspirations and interests of the developing countries should be emphasized.

79. Attention was also directed to paragraph 15 of the report of the Working Group reflecting a view that the work of the Working Group, in view of its mandate, should focus on the aspect of development, especially of developing countries, in order to distinguish this work from the work of other Working Groups of the Commission. Under another view, however, the new international economic order should be looked at as a system which had to be taken into account by all Working Groups of the Commission, and by the Commission as a whole.

80. Observations were made as to the content of the future guide. According to one view the guide should concentrate on those legal problems which the developing countries in particular face in contracts for the supply and construction of large industrial works. Under another view, the transfer of appropriate technology, the continued availability of spare parts and a good after-sales service were especially important for developing countries. The guide, according to this view, should assist enterprises in developing countries in negotiating contracts and identifying unfavourable clauses. In this regard it was observed that the future legal guide would be in the interest not only of developing countries, but also of all parties inexperienced in the negotiation of such contracts.

81. Views were exchanged on the content of a future study on industrial co-operation. It was suggested that such a study, in the light of General Assembly resolution 35/166 and in accordance with the discussion at the first session of the Working Group on the New International Economic Order (A/CN.9/176), should not only deal with the relations between enterprises but also with intergovernmental agreements, as these were of great importance for relations between parties at the enterprise level. This suggestion was supported as well as opposed.

82. The Commission heard statements by the observer from the United Nations Industrial Development Organization (UNIDO) and by the Secretary of the Commission regarding current activities, the overlapping of work, the attempts and possibilities for co-ordination and the necessity for close co-operation between the two organizations. There was general agreement that the Secretariats of UNCITRAL and UNIDO should establish close co-operation. The Commission expressed its appreciation to the observer from UNIDO for his statement indicating the willingness of UNIDO to co-ordinate its work, to the extent possible, with the work of UNCITRAL.

83. While there was general agreement that the work in hand should be executed as expeditiously as possible, views were divided on how quickly the Secretariat and the Working Group should proceed with their work. Under one view the next session of the Working Group should consider the second part of the study by the Secretary-General containing all the remaining topics, and also a sample of the draft legal guide. Another view was that the Secretariat should be given more time to enable it to study all the relevant issues carefully. It was also observed that requesting the Secretariat to prepare studies on all the remaining issues and to draft the legal guide at the same time might overburden the Secretariat. As far as the date of the next session was concerned, it was agreed that this should be decided in the context of the future work of the Commission (see infra, chap. IX).

Decision of the Commission

84. At its 250th meeting, on 24 June 1981, the Commission adopted the following decision:

The United Nations Commission on International Trade Law

1. Takes note with appreciation of the report of the Working Group on the New International Economic Order on the work of its second session and of the study by the Secretary-General entitled "Clauses related to contracts for the supply and construction of large industrial works";

2. Welcomes and approves the following decisions of the Working Group concerning its future work:

- (a) To request the Secretary-General to continue and complete the study on clauses to be found in contracts for the supply and construction of large industrial works;
- (b) To entrust to the Secretary-General the drafting of a legal guide that should identify the legal issues involved in such contracts and suggest possible solutions to assist parties, in particular from developing countries, in their negotiations;
- (c) To request the Secretary-General to submit, at a future session, a preliminary study on specific features of industrial co-operation contracts after the preparation of the legal guide on contractual provisions relating to contracts for the supply and construction of large industrial works;

3. Requests the Working Group to submit a progress report to the fifteenth session of the Commission.

CHAPTER VI

CO-ORDINATION OF WORK ^{25/}

Introduction

85. The Commission had before it General Assembly resolution 2205(XXI) of 17 December 1966 by which the United Nations Commission on International Trade Law was established and in which the Commission was given the mandate to co-ordinate legal activities in the field of the harmonization and unification of international trade law. The Commission also had before it resolutions 34/42 of 17 December 1979 and 35/51 of 4 December 1980 by which that mandate was re-affirmed.

86. At its thirteenth session in 1980, the Commission was of the view that the co-ordination of the legal activities of United Nations bodies took on a particular importance at a time when those bodies were increasingly active in the elaboration and adoption of legal rules. It was felt that more information was required about the programmes and terms of reference of the various United Nations organs before it would be possible to recommend a concrete course of action. ^{26/}

87. The Commission therefore requested its Secretariat to submit to it at its next annual session complete information on the activities of other organs and international organizations. ^{27/}

88. In response to this request the Commission had before it at its present session a report of the Secretary-General entitled "Current activities of international organizations related to the harmonization and unification of international trade law" (A/CN.9/202 and Add. 1-4), a report entitled "Question of co-ordination: direction of the work of the Commission" (A/CN.9/203) and a note by the Secretariat entitled "Co-ordination of activities" (A/CN.9/208).

^{25/} The Commission considered this subject at its 246th and 247th meetings, on 22 and 23 June 1981.

^{26/} Report of the United Nations Commission on International Trade Law on the work of its thirteenth session, Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17), para. 149.

^{27/} Ibid., para. 150.

89. The Commission was informed that a favourable response had been received by the Secretariat from bodies within and without the United Nations system to the request for information on their current activities relating to international trade law. In addition, representatives from the European Communities and from the secretariats of the Council for Mutual Economic Assistance, the Council of Europe, the Hague Conference on Private International Law (Hague Conference), the International Institute for the Unification of Private Law (UNIDROIT), the Organization of American States (OAS) and the United Nations Industrial Development Organization (UNIDO) made statements to the Commission on the activities of those organizations in the field of international trade law and on the subject of co-ordination of efforts in this field.

90. The Commission was informed that the Hague Conference would convene an extraordinary session in 1985 to revise the 1955 Hague Convention on the Law Applicable to International Sales of Goods. The Hague Conference had decided to invite all States to participate in that session. Non-member States of the Hague Conference would be invited to participate without financial implications as the Government of the Netherlands, and other member States of the Hague Conference, had agreed to make contributions for this purpose.

91. As regards the necessary preparatory work for the revision, the Hague Conference would convene in 1982 a Special Commission to which States members of the Commission that are not members of the Hague Conference would be invited with full capacity. States not members of the Commission could also participate as observers.

92. The Commission was also informed that UNIDROIT had decided to invite States members of the Commission which were not members of UNIDROIT to participate with full capacity in its Committee of Governmental Experts which would consider a draft Uniform Law on Agency of an International Character in the International Sale of Goods. The meeting would be held from 2 to 13 November 1981.

Discussion at the session

93. The Commission noted with appreciation the various statements from organizations which had expressed their willingness to continue to assist the Commission in its co-ordinating efforts.

94. As regards the decisions taken by the Hague Conference and UNIDROIT to invite members of the Commission to participate in their preparatory work as noted above, the Commission welcomed these decisions and regarded them as significant steps towards close collaboration in the work of the unification of the law related to international trade. The Commission accordingly recommended to all members of the Commission to participate actively in the preparatory work in response to the invitations.

95. The Commission also expressed its particular appreciation of the report submitted by the International Law Commission on its recent and current activities which might bear upon questions related to the field of international trade law. The suggestion was made that further efforts should be undertaken to strengthen relations between these two Commissions of the General Assembly permanently responsible for legal matters.

96. The view was expressed that care should be taken that the activities of the Commission in respect of contractual provisions relating to contracts for the supply and construction of large industrial works and the efforts of UNIDO in the preparation of model contracts for the construction of fertilizer plants did not result in a duplication of work.

97. It was also suggested that an increased effort should be made to foster co-operation with regional organizations interested in international trade law. Closer contact would reduce the likelihood of a duplication of work and adoption of conflicting regional conventions and could be useful in encouraging the ratification of conventions arising out of the Commission's work. In this regard the need for a global solution was noted, particularly in the field of international shipping legislation. It was also noted that the resolution of the Asian-African Legal Consultative Committee (reproduced as an annex to document A/CN.9/208) recommended to member States of that organization to consider the possibility of ratifying or adhering to the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg), and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). Special mention was also made in this regard of the OAS which had been active in a number of fields of international trade law of interest to the Commission.

98. It was suggested that as a first step the Secretariat should make sure that these organizations received all the relevant documentation in respect of the work of the Commission. However, it was also suggested that to implement adequately the Commission's objective in co-ordinating activities in international trade law, it would be necessary for the Secretariat to establish personal contact with these organizations, particularly by attending their meetings that were devoted to aspects of international trade law. The Commission was of the view that the necessary financial support should be made available for this activity within the framework of existing budgetary resources.

99. At the same time, the Commission expressed the view that it was the duty of Governments represented in various international organizations to exercise control over the programmes of work of those organizations and in particular to ensure that in drawing up those programmes of work, account was taken of existing programmes.

100. The Commission was in agreement that the co-ordination of work in international trade law depended upon the exchange of information. It was noted that the report on current activities of other organizations was useful for ascertaining developments in the field of international trade law. To further strengthen the co-ordinating role of the Commission, it was suggested that, in lieu of the report on current activities in its present form, the Secretariat should select a particular area of international trade law for intensive consideration and submit a report on that area which would focus, inter alia, on the following issues: the work of unification already undertaken in that area; parts of that area in which unification had not been undertaken and where unification might appropriately be undertaken; and the most suitable body to undertake the unification. It was understood, however, that this did not preclude the Secretariat from submitting a report on current activities in the present form after a certain interval.

101. The Commission was also of the view that it might, as it had done on some past occasions, endorse where appropriate legal texts emanating from the activities of other organizations active in the field of international trade law.

CHAPTER VII

TRAINING AND ASSISTANCE IN THE FIELD OF INTERNATIONAL TRADE LAW 28/

Introduction

102. The Commission, at its thirteenth session, decided to hold the Second UNCITRAL Symposium on International Trade Law on the occasion of its fourteenth session in Vienna. The Commission was informed at the thirteenth session that several States had decided to make contributions for the purpose of awarding fellowships to participants from developing countries to cover their travel and subsistence costs. It invited other States to make similar contributions so that the number of participants from developing countries might be increased.29/

103. At its current session, the Commission was informed that the Symposium was being held from 22 to 26 June 1981, concurrently with the session of the Commission. Contributions for fellowships had been received from the Governments of Austria, \$US 3,000; Canada, \$US 2,000; Chile, \$US, 2,000; Finland, \$US 3,340 (FMI5,000); Italy, \$US 10,000; Netherlands, \$US 9,615 (f.25,000); Philippines, \$US 1,000; Qatar, \$US 10,000 and Sweden \$US 2,000. These contributions had permitted the awarding of 15 fellowships to participants from five African States (Central African Republic, Guinea, Liberia, Sudan and Upper Volta); four Asian States (Papua New Guinea, Philippines, Thailand and Yemen Arab Republic); three European States (Malta, Romania and Yugoslavia); and three Latin American States (Argentina, Chile and Honduras). An additional 43 participants from 24 States were attending the Symposium at their own expense.

104. The lectures at the Symposium were given by representatives and observers at the present session and by members of the Secretariat. The Symposium dealt with matters which have been or are on the work programme of the Commission, i.e. the international sale of goods, international payments, carriage of goods by sea, international commercial arbitration and legal aspects of the new international economic order.

105. The Commission was informed that the planning for the Symposium had been greatly hindered by the late payment of pledges. It had not been certain until the final days before the Symposium was held how many fellowships could be awarded. Moreover, some of the pledges had not been received, and, in several cases, it had been necessary to withdraw the expected award of a fellowship because the funds were not available at the necessary time.

28/ The Commission considered this subject at its 250th meeting, on 24 June 1981.

29/ Report of the United Nations Commission on International Trade Law on the work of its thirteenth session, Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17), para. 162.

106. In respect of regional seminars, at its thirteenth session, the Commission requested the Secretary-General to "report to it on the possibility of holding regional seminars". 30/ In response to that request, the Commission had before it a report of the Secretary-General entitled "Training and assistance: possibility of holding regional seminars" (A/CN.9/206). This report discussed some of the administrative considerations which would be involved in a decision to hold regional seminars.

107. The Commission was also informed that the Secretariat had been in contact with several regional organizations to inquire whether seminars on international trade law might be organized on the occasion of their annual sessions. The Secretary-General of the Asian-African Legal Consultative Committee had expressed an interest if the host government to the Committee's annual meeting would be willing to assume the local costs of such a seminar. Furthermore, several bar associations had indicated willingness to furnish lecturers for such seminars. The activities of the Organization of American States in sponsoring seminars, and the activities of the Council for Mutual Economic Assistance in awarding fellowships to candidates from developing countries, were also mentioned.

Discussion at the session

108. The Commission expressed its appreciation to those States which had contributed to fellowships for participants from developing countries. It also expressed its appreciation to those representatives and observers who had given lectures.

109. There was agreement that the Commission should continue to sponsor symposia and seminars on international trade law. It was considered desirable for these seminars to be organized on a regional basis. In this way, it was felt, a larger number of participants from the region could attend and the seminars would themselves help to promote the adoption of the texts emanating from the work of the Commission. The Commission welcomed the possibility that regional seminars might be sponsored jointly with regional organizations. The Secretariat was requested to make such arrangements as it found desirable in this regard.

110. The Commission noted the serious problems caused by the uncertain financial resources available for the Commission's programme in training and assistance and the administrative difficulties caused by the late payment of pledges. It expressed the hope that States would once again make contributions for the purposes of the Commission's programme of training and assistance.

111. The Commission requested the Secretariat to continue its efforts to bring about the holding of regional seminars.

30/ Idem.

CHAPTER VIII

STATUS OF CONVENTIONS ^{31/}

Introduction

112. At its twelfth session, the Commission decided that the agenda of future sessions should include as an item the exchange of views on the state of signatures, ratifications and accessions to conventions based on drafts prepared by the Commission. ^{32/} The Commission had before it a note by the Secretariat entitled "Status of Conventions" (A/CN.9/205). ^{33/}

Discussion at the session

113. An exchange of views took place among representatives on their expectations as to the likely actions of their States as regards signing, ratifying or acceding to these conventions. It was noted that, while as regards some States these likely actions, and the time periods in which they might occur, could be predicted with some certainty, as regards other States necessary governmental formalities precluded a definite prediction. The discussion revealed, however, a definite trend towards a wider acceptance of the conventions in the next two or three years. It was recognized that the exchange of views served a useful function, as many States, in deciding on their own future action, took into account the intended action of other States.

114. There was wide agreement, however, that more effective action than an exchange of views was necessary to promote wider acceptance of the conventions. A suggestion was made that the Commission should communicate with all States, bringing to their notice the conventions, together with information regarding their possible entry into force, and appealing to them to sign, ratify or accede to the conventions. In reply, it was noted that a communication by the Commission recommending conventions which were the results of its own work might be injudicious. Furthermore, States might be reluctant to enter into communications with the Commission involving their reasons for not ratifying or acceding to these conventions.

^{31/} The Commission considered this subject at its 245th meeting, on 22 June 1981.

^{32/} Report of the United Nations Commission on International Trade Law on the work of its twelfth session, Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17), para. 132.

^{33/} A/CN.9/205 has now been issued as A/CN.9/205/Rev.1 in order to incorporate relevant information received during the fourteenth session of the Commission.

115. The Commission took note of the note by the Secretariat entitled "Co-ordination of activities" (A/CN.9/208) which showed that the Asian-African Legal Consultative Committee had recommended to the Governments of member States to consider the possibility of ratifying or adhering to the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg), and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). There was general agreement that the Secretariat should be encouraged to utilize various opportunities including contacts with regional bodies with a view to promoting the Conventions.

116. The Secretary of the Commission stated that a possible course might be for the Commission to recommend to the General Assembly that it authorize the Secretary-General to bring these Conventions to the notice of all States which have not ratified or acceded to them, together with information as to the mode of their entry into force and the current status of ratifications and accessions, and accompanied by an invitation to be answered within a specified period of time to supply him with information on the steps that have been taken with regard to ratification or accession. It was decided to adopt this course.

117. It was also decided that the Secretariat should inform the Commission at its next session of the result of the above inquiry together with a report on the status of the Conventions.

Decision of the Commission

118. At its 245th meeting, on 22 June 1981, the Commission adopted the following decision:

The United Nations Commission on International Trade Law,

Recognizing the value for the unification of international trade law of the entry into force at an early date, and the wide acceptance, of the Convention on the Limitation Period in the International Sale of Goods (New York, 1974); the Protocol amending the Convention on the Limitation Period in the International Sale of Goods (Vienna, 1980); the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg); and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980),

Being of the opinion that the General Assembly is the most appropriate body to initiate action directed to these ends;

1. Recommends to the General Assembly that it authorize the Secretary-General:

- (a) To bring these Conventions to the notice of all States which have not ratified or acceded to them, and to communicate to them information as to the mode of their entry into force and the current status of ratifications and accessions;
- (b) To invite States within a specified period of time to supply him with information on the steps that have been taken with regard to ratification or accession;

2. Requests the Secretariat to take such measures as it deems appropriate to promote the wider acceptance of these Conventions.

CHAPTER IX

FUTURE WORK AND OTHER BUSINESS ^{34/}

A. Medium-term plan of the Commission

119. The Commission had before it a draft medium-term plan of the Commission for the years 1984-1989 as drafted by the Secretariat (A/CN.9/XIV/R.1).

120. In accordance with General Assembly resolution 34/224 of 20 December 1979, the Commission reviewed this draft plan.

121. The text of paragraph 12 of the draft plan commenced as follows:

"Strategy of the Secretariat:

"12. This will involve the following continuing activities:

- undertaking the research, drafting and documentation (where necessary with assistance from consultants) required by UNCITRAL or its Working Groups or necessary for Diplomatic Conferences;

-"

122. The Commission deleted the words in parenthesis quoted above and, subject to this modification, approved the medium-term plan. The Commission was of the view that this deletion did not affect the use of consultants by the Secretariat in accordance with the normal United Nations practice.

123. The Commission was of the view that, at the present stage, the plan did not contain any activities which may be considered as obsolete, of marginal usefulness or ineffective. The Commission also considered that the subprogrammes set forth therein should be given equal priority.

B. General Assembly resolutions

(i) General Assembly resolution on international economic law

124. The Commission took note of General Assembly resolution 35/166 of 15 December 1980 in which the Commission was requested to submit relevant information to, and to co-operate fully with, the United Nations Institute for Training and Research (UNITAR) in its study on the existing and evolving principles and norms of international law relating to the new

^{34/} The Commission considered this subject at its 250th meeting, on 24 June 1981.

international economic order concerning the economic relations among States, international organizations, other entities of public international law, and the activities of transnational corporations.

125. The Secretary informed the Commission that the Secretariat had submitted relevant information concerning the activities of the Commission in the field of the new international economic order to UNITAR.

(ii) General Assembly resolution on summary records of the Commission

126. The Commission took note with appreciation of General Assembly resolution 35/51 of 4 December 1980 by which the Commission was authorized to have summary records for its sessions devoted to the preparation of draft conventions and other legal instruments.

(iii) General Assembly resolution on the work of the Commission

127. The Commission took note with appreciation of General Assembly resolutions 35/51 of 4 December 1980 on the report of the United Nations Commission on International Trade Law on the work of its thirteenth session and 35/52 of 4 December 1980 on the UNCITRAL Conciliation Rules.

C. Date of the fifteenth session of the Commission

128. It was decided that the fifteenth session of the Commission would be held from 26 July to 6 August 1982 in New York.

D. Sessions of the Working Groups

129. It was decided that the twelfth session of the Working Group on International Negotiable Instruments would be held in January 1982 at Vienna.

130. As regards the next session of the Working Group on International Contract Practices, it was noted that the accepted pattern of alternation of the location of the session between New York and Vienna would call for the next session to be held at Vienna, and the session after that to be held in New York. It was also noted that no session of the Working Group could be held in New York in the autumn of 1982 because of the holding of the thirty-seventh session of the General Assembly. In order not to foreclose the possibility of holding two sessions of the Working Group in 1982 to expedite the work, it was agreed that the third session of the Working Group on International Contract Practices would be held from 16 to 26 February 1982 in New York. This would permit the holding of a further session in the autumn of 1982 at Vienna. However, it was also agreed that the need for a further session of the Working Group in 1982 would be decided at the next session of the Commission.

131. It was decided that the third session of the Working Group on the New International Economic Order would be held from 12 to 23 July 1982 in New York.

E. Composition of the Commission

132. The observer of the People's Republic of China drew the attention of the Commission to the fact that his country had actively participated in the work of the Commission in recent years. He stated that his country now wished to become a member of the Commission when its composition was next renewed.

ANNEX

List of documents before the session

A. General series

- A/CN.9/195 Provisional agenda
- A/CN.9/196 Report of the Working Group on International Negotiable Instruments on the work of its tenth session (Vienna, 5-16 January 1981)
- A/CN.9/197 Report of the Working Group on International Contract and Corr.1 Practices on the work of its second session (New York, (Russian only) 13-17 April 1981)
- A/CN.9/198 Report of the Working Group on the New International Economic Order on the work of its second session (Vienna, 9-18 June 1981)
- A/CN.9/199 Electronic Funds Transfer
- A/CN.9/200 Universal unit of account for international conventions
- A/CN.9/201 Clauses protecting parties against the effects of currency fluctuations
- A/CN.9/202 Current activities of international organizations related and Add.1-4 to the harmonization and unification of international and Add.3/Corr.1 trade law (English only)
- A/CN.9/203 Question of co-ordination: direction of the work of the Commission
- A/CN.9/204 Alternative methods for the final adoption of conventions and Corr.1 emanating from the work of the Commission (English only)
- A/CN.9/205 Status of Conventions and Rev.1
- A/CN.9/206 Training and assistance: possibility of holding regional seminars
- A/CN.9/207 International commercial arbitration: possible features of a model law on international commercial arbitration
- A/CN.9/208 Co-ordination of activities

B. Restricted series

A/CN.9/XIV/CRP.1	.....	Draft report of the United Nations Commission on International Trade Law on the work of its fourteenth session: Organization of the session, chapter I
A/CN.9/XIV/CRP.1/Add.1	.....	Draft report, chapter II
A/CN.9/XIV/CRP.1/Add.2	.....	Draft report, chapter II (contd)
A/CN.9/XIV/CRP.1/Add.3	.....	Draft report, chapter III
A/CN.9/XIV/CRP.1/Add.4	.....	Draft report, chapter III (contd)
A/CN.9/XIV/CRP.1/Add.5	.....	Draft report, chapter IV
A/CN.9/XIV/CRP.1/Add.6	.....	Draft report, chapter IV (contd)
A/CN.9/XIV/CRP.1/Add.7	.....	Draft report, chapter V
A/CN.9/XIV/CRP.1/Add.8	.....	Draft report, chapter VI
A/CN.9/XIV/CRP.1/Add.9	.....	Draft report, chapter VII
A/CN.9/XIV/CRP.1/Add.10	.....	Draft report, chapter VIII
A/CN.9/XIV/CRP.1/Add.11	.....	Draft report, chapter VIII (contd)
A/CN.9/XIV/R.1	.....	Draft medium-term plan of the Commission

C. Information series

A/CN.9/XIV/INF.1	Information for participants
A/CN.9/XIV/INF.2/Rev.1	List of participants

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