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

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25 June-10 July 1984

GENERAL ASSEMBLY

OFFICIAL RECORDS: THIRTY-NINTH SESSION

SUPPLEMENT No. 17 (A/39/17)

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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 seventeenth session, held in New York, from 25 June to 10 July 1984.

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.

CHAPTER I

ORGANIZATION OF THE SESSION

A. Opening

3. The United Nations Commission on International Trade Law (UNCITRAL) commenced its seventeenth session on 25 June 1984. The session was opened on behalf of the Secretary-General by Mr. Carl-August Fleischhauer, Under-Secretary-General, 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 9 November 1979 and 15 November 1982, are the following States: 1/

Algeria,** Australia,** Austria,** Brazil,** Central African Republic,** China,** Cuba,* Cyprus,* Czechoslovakia,* Egypt,** France,** German Democratic Republic,** Germany, Federal Republic of,* Guatemala,* Hungary,* India,* Iraq,* Italy,* Japan,** Kenya,* Mexico,** Nigeria,** Peru,* Philippines,* Senegal,* Sierra Leone,* Singapore,** Spain,* Sweden,** 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.*

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

** Term of office expires on the day before the opening of the regular session of the Commission in 1989.

5. With the exception of the Central African Republic, all members of the Commission were represented at the session.

6. The session was also attended by observers from the following States: Argentina, Belgium, Bulgaria, Canada, Chile, Democratic People's Republic of Korea, Dominican Republic, Ecuador, Finland, Greece, Haiti, Holy See, Honduras, Netherlands, Nicaragua, Norway, Oman, People's Democratic Republic of Yemen, Portugal, Republic of Korea, Switzerland, Syrian Arab Republic, Thailand, Venezuela, Zaire and Zambia.

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

(a) United Nations organs

United Nations Conference on Trade and Development
United Nations Industrial Development Organization

(b) Specialized agency

International Monetary Fund

(c) Intergovernmental organizations

Asian-African Legal Consultative Committee
Commission of the European Communities
Hague Conference on Private International Law
International Institute for the Unification of Private Law
Organization of American States

(d) International non-governmental organizations

European Banking Federation
International Chamber of Commerce
International Maritime Committee

C. Election of officers

8. The Commission elected the following officers: 2/

Chairman: Mr. I. Szasz (Hungary)

Vice-Chairmen: Mr. J. Barrera Graf (Mexico)
Mr. R. K. Dixit (India)
Mr. P. K. Mathanjuki (Kenya)

Rapporteur: Mr. M. Olivencia Ruiz (Spain)

D. Agenda

9. The agenda of the session, as adopted by the Commission at its 285th meeting, on 25 June 1984, was as follows:

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. International payments.

5. International commercial arbitration.

6. New international economic order.

7. Operators of transport terminals.

8. Co-ordination of work.

9. Status of conventions.

10. Training and assistance.

11. Relevant General Assembly resolutions.

12. Future work.

13. Other business.

14. Adoption of the report of the Commission.

E. Adoption of the report

10. The Commission adopted the present report at its 303rd and 304th meetings, on 10 July 1984, by consensus.

CHAPTER II

INTERNATIONAL PAYMENTS

A. Draft Convention on International Bills of Exchange and International Promissory Notes and draft Convention on International Cheques 3/

Introduction

11. At its fifteenth session, the Commission decided that the texts of the draft Convention on International Bills of Exchange and International Promissory Notes and of the draft Convention on International Cheques, as adopted by its Working Group on International Negotiable Instruments at the close of the eleventh session of the Working Group (August 1981), should be transmitted to Governments and interested international organizations for their comments, together with a commentary. The Commission also requested the Secretary-General to prepare a detailed analytical compilation of those comments. 4/

12. At its sixteenth session, the Commission decided to devote part of its seventeenth session to a substantive discussion of the two draft Conventions. To that end, it requested the Secretariat to identify key features and major controversial issues that may be inferred from the comments of Governments and international organizations on the draft Conventions. 5/

13. At its current session, the Commission had before it a report of the Secretary-General containing an analytical compilation of comments by Governments and international organizations (A/CN.9/248), a note by the Secretariat identifying major controversial and other issues inferred from those comments (A/CN.9/249), and a note by the Secretariat setting forth a summary of the comments of two States which were received after document A/CN.9/249 had been prepared (A/CN.9/249/Add.1).

Discussion at the session

14. The Commission, at the outset of its discussion, was agreed that it should hold a general discussion on the two draft Conventions and thereafter consider the major and other issues raised by Governments in their observations on the two draft Conventions.

1. General observations on the draft Conventions

15. Opinions were divided on whether further work in the field of negotiable instruments was justified. Representatives who expressed doubts in that regard advanced the following reasons:

(a) The existence of divergent legal systems had not given rise to serious problems in respect of international negotiable instruments used in international payment and financing transactions, as evidenced, for example, by the paucity of relevant case law;

(b) It was feared that the creation of an additional system of negotiable instruments law would lead to serious complications in that different sets of rules would apply to similar types of instruments;

(c) The creation of a special legal régime for international instruments was not the most appropriate way in which to unify the law. In that connection it was stated that unification would truly be served only if it addressed negotiable instruments in both their domestic and international settings. It was also mentioned that the Convention providing a Uniform Law for Bills of Exchange and Promissory Notes, Geneva, 1930 (hereinafter referred to as "the 1930 Geneva Convention") and the Convention providing a Uniform Law for Cheques, Geneva, 1931 (hereinafter referred to as "the 1931 Geneva Convention") were outdated in some respects, and revision of these Conventions would be desirable;

(d) The draft Conventions, though presenting a compromise between competing systems, would not encourage circulation of international negotiable instruments since they did not sufficiently favour the position of the holder of an instrument;

(e) The proposed draft texts were too complex and were often difficult to understand because, for example, provisions frequently contained references to other provisions in the drafts instead of treating an issue in self-contained provisions;

(f) It was deemed unlikely that a convention or conventions would command wide support whether in the form of ratifications by States, or by issuers of negotiable instruments making the convention or conventions applicable.

16. Most of the representatives who expressed some or all of the above reservations distinguished between the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Convention on International Cheques and had less serious objections to the draft Convention on International Bills of Exchange and International Promissory Notes.

17. Representatives supporting further work on the two draft Conventions advanced the following reasons:

(a) The increased use of negotiable instruments in international trade, particularly for purposes of financing export transactions and in lending transactions, justified the unification of law in this field. There is a natural urge on the part of newly independent States to participate in the legislative process in the light of their own interests and views;

(b) The draft Conventions represented an acceptable compromise between common law systems and systems based on the 1930 and 1931 Geneva Conventions, and constituted a good basis for reaching international agreement;

(c) The approach adopted by the two draft Conventions as regards their scope of application was both realistic and acceptable. Although a complete unification of negotiable instruments law covering both international and domestic instruments would no doubt be ideal, such a goal would be difficult to attain, since most countries were not ready to renounce their national legislation. Even a more limited approach, i.e. to draft a law applicable to international instruments having a mandatory character, was unlikely to lead to many ratifications by States. However, the creation of a new international instrument for optional use could prove to be a valuable first step in the long process of unification and would enable the business community itself to decide whether or not to use such an instrument governed by uniform rules. Furthermore, the establishment of uniform rules for international negotiable instruments would make it possible to accommodate new practices relating to such instruments;

(d) In reply to the objections noted at (a) and (e) of paragraph 15 above, it was noted that, while clarification of certain provisions was desirable and might in fact be needed, any revision aiming at simplification should be undertaken carefully so as not to impair the effectiveness of the texts in dealing with the complex relationships between the parties to an instrument. Furthermore, the paucity of case law relating to international negotiable instruments did not mean that problems did not arise in practice but rather that problems were generally settled between banks.

18. The prevailing view among those representatives who supported further work was that such work should in the first instance focus on the draft Convention on International Bills of Exchange and International Promissory Notes.

19. The question was raised whether countries that had ratified the 1930 and 1931 Geneva Conventions could ratify the proposed draft Conventions without violating their obligations under the former Conventions. It was felt that this question deserved further study at a later stage.

20. In view of the significant degree of support for the unification of negotiable instruments law along the lines agreed to by the Commission at earlier sessions, the Commission agreed that further work on that subject was justified. The Commission decided, however, that such work should concentrate on the draft Convention on International Bills of Exchange and International Promissory Notes, and that the work on the draft Convention on International Cheques should be postponed, and the future work on the draft Convention on International Cheques would be considered after the work on the draft Convention on International Bills of Exchange and International Promissory Notes had been concluded. 6/

2. Observations on major controversial issues 7/

(a) Forged endorsements (arts. 14 (1) (b) and 23)

21. There was considerable support in the Commission for the policy underlying article 23, and most representatives expressed the view that the provisions of article 23 (1) constituted an acceptable compromise between the legal systems of common law and civil law countries.

22. It was noted that under article 23 (1) the liability for damages resulting from a forged endorsement was placed on the forger and on the transferee from the forger. It was suggested that an exception should be made in the case of the endorsee who took the instrument from the forger in good faith. In such a case the endorsee should not be held liable for damages. The rule as proposed in article 23 (1), if retained, would impair the circulation of the proposed international instrument. In that connection other representatives questioned the advisability of introducing into the draft Convention the concept of good faith which was difficult to define and would almost certainly be interpreted in different ways. If an exception were to be made in respect of an endorsee who had no notice of the fact that the endorsement was forged, the exception should be based on the absence of knowledge as defined in article 5.

23. After deliberation, the prevailing view in the Commission was that to make an exception in favour of the transferee in good faith would impair the compromise and therefore the substance of article 23 (1) should be retained.

24. Attention was drawn to the use in article 23 (1) of the word "party". Under the definition of "party" in article 4 (8), the payee was not a party. There was general agreement that the payee and any endorsee whose endorsement was forged should be entitled to recover damages and that therefore article 23 (1) should be modified accordingly.

25. The proposal was made that the amount which may be recovered as compensation under article 23 should be limited to the amount specified in article 66 or 67 of the draft Convention.

26. It was noted that article 23 (2) left to the applicable national law the question whether payment by a party or the drawee of an instrument to the forger would make him liable to pay damages. Since different jurisdictions might deal with this question in different ways, the view was expressed that it would be desirable that the draft Convention should deal with that issue.

27. The possible relationship between articles 23 (2) and 68 was discussed. It was pointed out that although, under article 68, a party may be discharged of liability on the instrument, such party could still be liable off the instrument under article 23 (2) if such liability was left to national law as suggested by the draft Convention. Under one view, that was an acceptable solution since the liability for damages was off the instrument. Under another view, however, the issue was of such importance that it should be settled by the Convention. In that connection, it was suggested that the drawee, the acceptor or the maker who paid, or the endorsee for collection who collected, should be liable for compensation only if payment was made with knowledge of the forgery.

28. There was a further suggestion that article 23 (2) should be deleted. It was noted, however, that in such a case the drawee who paid the forger would not be liable for damages under article 23 (1) since he was not a person to whom the instrument was transferred by the forger (see art. 14). However, the endorsee for collection to whom the instrument was endorsed by the forger was a transferee and could thus be liable under article 23 (1), even if article 23 (2) were deleted. After discussion, the prevailing view in the Commission was that the issue should be reconsidered with a view to revising or deleting article 23 (2).

29. As regards article 23 (3), the question was raised whether it was justified to treat as a forgery the case of endorsement by an agent without authority.

(b) The concept of holder and protected holder

30. It was noted that the question as to the circumstances in which the holder of an instrument would be open to claims and defences was one of policy in that a decision had to be made on the degree of protection to be given to the obligor, on the one hand, and the holder, on the other. The draft Convention used the double concept of holder and protected holder and, as a general rule, protected the holder only in cases in which he had the status of a protected holder. Thus, a protected holder could cut off a claim to the instrument as well as most defences to liability. Opinions were divided as to whether the draft Convention achieved a proper balance between the interests of an obligor and of a holder. Under one view, the draft Convention was acceptable in that respect. Under another view, however, the draft Convention was too much in favour of the obligor. The following example was given: C, the payee, obtains by fraud from A, the drawer, a bill drawn on B. C transfers the bill to D and C has a defence against D resulting from the

underlying transaction between them. D transfers the bill to E who takes it with knowledge of the defence of C against D but without knowledge of the fraud. Under the draft Convention, E would not be a protected holder and could not cut off a claim by A to the instrument. Several representatives were of the opinion that such a rule was unacceptable and that they would prefer a rule under which E could cut off the claim by A if E had no knowledge of the fraud. Similarly, an obligor should not be entitled to raise a defence against a holder who had no knowledge of such defence.

31. After discussion, the prevailing view in the Commission was that the concept of holder and protected holder should be retained, but that the criteria under which a holder qualified as a protected holder should be reconsidered with a view to shifting the balance more in favour of the creditor. The following views were expressed:

(a) The circumstances in which a holder would take an instrument free of those claims and personal defences of which he had no knowledge should be reconsidered;

(b) The mere fact that a person had taken an incomplete instrument should not prevent him from being protected provided he had completed the instrument in accordance with the authority given;

(c) The requirement that an instrument be regular on its face for the purpose of a person becoming a protected holder was not clear and should be reconsidered;

(d) The question was raised whether the definition of knowledge in the draft Convention was acceptable in view of the fact that a person was deemed to have knowledge if he could not have been unaware of its existence (art. 5). The suggestion was made that the definition should be limited to actual knowledge.

32. The suggestion was made that it ought to be considered whether the draft Convention should protect a holder only in those cases in which he took the instrument in good faith, and whether the shelter rule (art. 27) should enable a holder to have the rights of a protected holder even though he had taken the instrument in bad faith.

33. It was noted that article 26 (1) (c), concerning real defences that may be set up against a protected holder, referred to the defence based on incapacity and the defence of non est factum only. It was not clear whether other real defences available under the applicable national law could be set up against a protected holder and it was suggested that this should be clarified.

34. The general observation was made that the frequent references to other articles in the draft Convention were not conducive to clarity.

(c) Liability of a transferor by mere delivery

35. It was noted that article 41 dealt with the liability, off the instrument, of a person who transferred an instrument by mere delivery. Such a person was liable for any damages that a subsequent holder may suffer because of defects in previous signatures, material alterations or other infirmities in the rights of such person to and upon the instrument. It was further noted that such liability did not depend upon whether the transferor by mere delivery knew or did not know of such

defects, alterations or infirmities. Finally, such liability ran with the instrument in favour of any subsequent holder who, when he took the instrument, had no knowledge of the defects, alterations or infirmities.

36. Opinions were divided as to whether a rule along the lines of article 41 should be retained in the draft Convention. Under one view, the draft provision should be deleted for the following reasons: the liability regulated in that article was a liability off the instrument, and in view of the principles agreed upon for drafting the proposed Convention such type of liability should not be regulated in the Convention. Furthermore, the liability imposed on a transferor by mere delivery was in many respects greater than the liability incurred by an endorser under the same circumstances. Also, this liability was too strict in that it was imposed even on a transferor without knowledge of the defect at issue. The opinion was also expressed that the provision was of rather limited practical relevance.

37. Under another view, it was desirable to maintain in the draft Convention a rule along the lines of article 41. It seemed imperative to include in the draft Convention a substantive rule in view of the considerable disparity between existing legal systems with regard to such liability. It was felt, however, that the provision could be modified in the following ways. First, the scope of the provision could be expanded so as to cover also the liability off the instrument of an endorser. Secondly, the scope of the provision could be narrowed by (a) giving a right of action only to the immediate transferee and not to any remote holder, and (b) limiting the instances in which a transferor would incur liability (e.g., only to instances of forgery or unauthorized signature).

38. Despite considerable support for deleting article 41, the Commission decided to retain, for the time being, the draft provision so as to allow further consideration, in particular in the light of the above proposals for modification.

3. Observations on additional issues

39. The Commission considered the additional issues set forth in part III of document A/CN.9/249, and certain other issues.

(a) Article 1 (2) (e): "international elements"

40. The Commission considered the requirement in article 1 that at least two of the places indicated in article 1 (2) (e) should be situated in different States before a bill of exchange qualified as an international bill of exchange to which the draft Convention applied. Under one view, the scope of application of the draft Convention should be widened by making it applicable to a bill of exchange under the sole condition that the bill contained in the text thereof the words "international bill of exchange (Convention of ...)"; accordingly, article 1 (2) (e) should be deleted. Under another view, the scope of application should be narrower than that resulting from the present text of article 1 (2) (e), in order to ensure that the draft Convention would only apply to bills that were clearly of an international character. The scope of application might be narrowed, for example, by listing the places noted in article 1 (2) (e) in distinct groupings, and by considering an instrument to be international only if at least one of the places in one group and one of the places in another group were situated in different States. The prevailing view, however, was that the balance struck in

article 1 as to the scope of application of the draft Convention was satisfactory and should be maintained.

41. The view was expressed that the draft Convention should only apply if a bill of exchange showed that the place where the bill was drawn and the place of payment were situated in different States. An indication in the bill of those places was important because they were regarded as essential factors determining the law applicable to issues not covered by the draft Convention. It was decided, however, that an indication of those places should not be a pre-condition to the application of the draft Convention. It was also pointed out that there was a need to revise the criterion contained in article 1 (4) so as to limit the application of the Convention to genuinely international instruments.

42. It was noted that article 1 contained two sets of requirements: the requirements necessary to make an instrument a bill of exchange, and the requirements necessary to give an instrument the international character which would attract the application of the draft Convention. It was suggested that clearer separation of those two sets of requirements was desirable.

(b) Articles 4 (10) and X: "definition of signature"

43. Support was expressed for the view that the draft Convention should only permit signatures on bills of exchange to be handwritten, as handwritten signatures gave an assurance of the genuineness of bills of exchange. It was also suggested that in normal commercial practice bills of exchange were not produced in such circumstances (e.g., in sets containing very large numbers of bills) as to make signature by mechanical means essential. The prevailing view, however, was that signatures which were not handwritten should be permitted. Furthermore, bills of exchange were sometimes issued or negotiated in circumstances which made handwritten signatures impractical (e.g., in the case of bank acceptances, or negotiation of bills between banks). In addition, retention of the requirement of handwritten signatures did not assure the genuineness of documents, as such signatures could be forged.

44. It was noted that methods of signature other than those described in article 4 (10) (e.g., by thumb-print) were adopted in some countries, and accordingly it was suggested that the article should permit methods of signature recognized under national laws. It was observed in reply, however, that the present text permitted all methods of signature which were likely to be used on an international bill of exchange. It was also suggested that signatures other than in handwriting (e.g., by symbol) should in some manner identify the signatory.

45. There was general agreement that article X should be retained to accommodate States whose legislation required that a signature on an instrument be handwritten. It was noted, however, that while the idea underlying the article was acceptable, the text itself might need some clarification. In particular, the question was raised as to the effect to be given to a signature which was not handwritten made in a Contracting State which had made a declaration under article X, where the signatory was not a national of that State. The question was also raised as to the effect of a signature which was not handwritten made by a national of that State, if the validity of the signature arose in a State whose legislation did not require handwritten signatures. It was also suggested that the article might require that the place where a signature was made should be indicated on the bill, as this would assist persons taking the bill to determine the validity of signatures on the bill.

46. It was noted that article 4 (10) included a definition of "forged signature", and it was suggested that, to the extent possible, the articles in the draft Convention dealing with forgery should be grouped together. In addition, doubt was expressed whether it was appropriate to treat a signature made by the unauthorized use of the means indicated in article 4 (10) as a forged signature, in view of the difficulty of ascertaining whether the signature had or had not been authorized.

(c) Article 4 (11): "definition of money"

47. It was observed that certain monetary units established by intergovernmental organizations or by intergovernmental agreements (e.g., the Special Drawing Right of the International Monetary Fund, the Transferable Rouble of the International Bank for Economic Co-operation, and the European Currency Unit of the European Economic Community) were currently in use in international commercial transactions. The effect of drawing or making an instrument in such a unit was, however, unclear under most national legislations. The proposed Convention would gain in utility if it were made applicable to instruments drawn or made in and payable in such units, or drawn or made in such units and payable in currency. There was general agreement that the proposed Convention should be applicable in such cases, and that article 4 (11) should be retained and modified to achieve that effect. It was also noted that the retention of article 4 (11) as so modified would result in a need for corresponding modifications to other articles (e.g., art. 6). It was also suggested that thought should be given to making the definition of "money" and "currency" include immediately available credit.

(d) Rate of interest

48. The Commission considered the requirement that a sum payable must be a definite sum, particularly in connection with the provisions of article 6 which permits the stipulation on an instrument that it is to be paid with interest or by instalments at successive dates.

(i) Article 6 (a): "rate of interest" and Article 7 (4): "rate of interest stipulated"

49. The prevailing view was that the draft Convention should permit stipulation of interest on international instruments of whatever maturity date.

50. The proposal was made that the draft Convention should allow the issuance of instruments with floating rates. Such instruments were not usually negotiable under current legislations in that they violated the requirement that the sum payable by the instrument be a definite sum. If the draft Convention were to accommodate current practice in respect of such instruments, it would add to the attractiveness of the proposed Convention. There was considerable support for that proposal. On the other hand, the proposal was opposed on the ground that it would create uncertainty regarding the amount due at maturity and might work to the detriment of the debtor. The view was expressed that instruments with a floating interest rate could clash with the principle that instruments should be certain on their face, and could give rise to legal uncertainty when the rate is left to the full or partial determination of the holder.

(ii) Article 6 (b), (c): "instrument payable by instalments at successive dates"

51. Opinions were divided on the question whether article 6 (b) and (c) should be retained. Under one view, there was considerable experience in certain countries of the use of such instruments and it would therefore impair the attractiveness of the draft Convention if such use were not accommodated. Under another view, paragraphs (b) and (c) should be deleted. Instruments drawn payable at successive dates would create difficulties as regards presentment for payment, and the commercial need for payment by instalments at successive dates could be met by the drawing or making of separate instruments with successive maturity dates. The Commission was agreed that paragraphs (b) and (c) should be retained. After further discussion, the Commission generally agreed that consideration should be given in relation to that issue to making a distinction between bills of exchange and promissory notes taking into account current practices which appeared to draw such a distinction.

52. The Commission did not accept a proposal that the draft Convention should accommodate instruments bearing a clause that if taxes were to be paid the amount of the instrument would be increased proportionally.

(e) Article 9: "plurality of drawers and payees" 8/

53. It was stated that a plurality of drawers or payees was not frequently met in practice and that therefore article 9 (1) (b) and (c) and article 9 (2) (b) should be deleted. It was also suggested that the rule of interpretation in article 9 (3) should be reversed. The Commission, after deliberation, agreed to retain article 9 as currently drafted.

(f) Article 10: "bill drawn by drawer on himself"

54. The proposal was made that, if a bill was drawn by a drawer on himself, the holder should be entitled to treat it either as a bill of exchange or as a promissory note. It was observed that, while some legislations contained such a provision, other provisions of the draft Convention relating to presentment for payment and to the liability of the drawer would have to be modified. The Commission, after deliberation, did not accept the proposal.

(g) Article 11: "incomplete instrument"

55. The Commission did not accept a proposal that article 11 be deleted.

56. The Commission was in agreement with the policy underlying article 11, but also expressed the view that certain aspects regarding completion should be clarified.

(h) Articles 30, 52, 58 and 63: "legal effects of implied act or omission"

57. While there was agreement that proceedings such as presentment, protest or notice of dishonour could be waived (arts. 52, 58 and 63), there were considerable differences of opinion as to whether such waiver could be made impliedly. Under one view, a waiver should have effect only if it was made expressly on the instrument. Under another view, a waiver should also be given effect if it was made outside the instrument. Under yet another view, the legal effect to be given

to a waiver outside an instrument should be left to national law. After deliberation, there was considerable support for the position that the draft Convention should deny legal effect to an implied waiver outside the instrument. It was generally agreed that the words "or by implication" in articles 52, 58 and 63 should be deleted, and that during the reconsideration of these articles the exclusion of implied waivers should be tested on the basis of specific cases.

58. It was also agreed that the words "or impliedly" in article 30 should be deleted, although it was recognized that the implied acceptance of a signature by a person whose signature was forged presented different problems and should accordingly be treated separately.

(i) Article 34 (2): "exclusion of liability by drawer"

59. There was general agreement that a drawer of a bill of exchange should be permitted to exclude his liability for non-acceptance of the bill. However, opinions were divided on the question whether the drawer should be permitted to disclaim liability for non-payment of the bill. Under one view, article 34 (2) should not permit such disclaimer, since permitting such disclaimer would make it possible for a bill of exchange to be issued and to circulate without a person being liable on it. Under another view, article 34 (2) was acceptable in that it reflected actual practice and found its counterpart in some legal systems. Under yet another view, the drawer should be permitted to disclaim his liability for non-payment by the drawee or the acceptor in instances where a party other than the drawer was liable on the bill, as in the following cases: (a) where the drawer issued an accepted bill of exchange; (b) where the drawer issued a bill on which a guarantee was given for the drawee (art. 43); (c) where the drawer issued a bill on which there was an endorsement; (d) where the drawer issued a bill on which he had disclaimed his liability for non-payment and on which no other party was liable at the time of issuance but where subsequent to the issuance a person became a party, e.g., the bill was endorsed or accepted or guaranteed after its issuance by the drawer.

60. The Commission, after deliberation, agreed that the revised draft of article 34 (2) should reflect the policy that the disclaimer by the drawer of his liability for non-payment should have effect only if another party was liable on the bill.

(j) Article 42: "guarantee"

61. In respect of the provisions concerning the guarantor the Commission considered the following issues:

(a) Article 42 (1): "guarantor for the drawee". The objection was made that article 42 (1) permitted the guarantee to be given for the drawee although the drawee was not liable on the bill of exchange. Such a rule would seem to indicate that the guarantee for the drawee was in essence a kind of acceptance by a non-drawee. If such were the case the draft Convention should set forth special rules dealing with the liability of the guarantor for the drawee. The Commission, after deliberation, decided to retain a provision permitting a person to guarantee payment by the drawee and noted that the draft Convention in articles 50 (2) (b) and 53 (3) contained special provisions governing the liability of the guarantor for the drawee.

(b) Article 42 (5): "rule of interpretation". It was proposed that the presumption that the guarantee was deemed to have been given for the drawee or the acceptor of a bill, or the maker of a note, in cases where the guarantor had not specified the person for whom he intended to become guarantor, should not be an irrebuttable presumption in cases where the intention of the guarantor was clear from the instrument itself, as where the guarantor's signature appeared beside or under the signature of a party. In such a case the presumption should be that the guarantee was given for such party. The Commission, after deliberation, did not accept this proposal on the ground that the rule as proposed in the draft Convention promoted legal certainty, and that it fell to the guarantor to specify for which person he wished to become guarantor, whether expressly or by implication in reliance on article 42 (5).

(c) "Guarantee of an incomplete instrument". It was noted that the draft Convention permitted the drawee to accept an incomplete instrument (art. 38). It was proposed that the draft Convention contain a provision according to which an instrument may be guaranteed before it had been signed by the drawer or the maker or while otherwise incomplete. The Commission, after deliberation, accepted this proposal.

(k) Articles 48 and 52: "bankruptcy of drawee"

62. The Commission considered the liability of parties to a bill of exchange in the event of the bankruptcy of the drawee or the acceptor. It was noted that under article 48 presentment for acceptance was dispensed with if the drawee had no longer the power freely to deal with his assets by reason of his insolvency, and that in such a case the holder was entitled to an immediate right of recourse against prior parties (art. 50 (1) (b), (2) (a)). However, where the drawee had accepted the bill and had, after such acceptance, but before maturity, become bankrupt, the draft Convention did not provide for the exercise of a right of recourse by the holder before the date of maturity of the bill (art. 54 (1) (b), (2)). It was suggested therefore that the draft Convention should provide for an immediate right of recourse, before maturity, where the holder of an accepted bill learned of the bankruptcy of the acceptor before the date of maturity. After deliberation, the prevailing view in the Commission was against the acceptance of this proposal, which however should not prevent further consideration of this matter.

(l) Article 58 (2) (d): "dispensation of protest for dishonour"

63. The view was expressed that the range of cases in which protest was dispensed with under article 58 (2) (d) was excessively wide. For example, paragraph (2) (d) provided that protest was dispensed with in all cases in which presentment for acceptance or for payment was dispensed with. Preference was expressed for a rule according to which protest for dishonour by non-acceptance or non-payment should always be made for the purposes of proving the dishonour, irrespective of whether or not presentment was dispensed with. The Commission, after deliberation, decided to retain article 58 (2) (d) in its present form.

(m) Article 68 (3): "ius tertii"

64. The proposal was made that where a third person had asserted a claim to the instrument, article 68 (3) should provide that, if the law of the place of payment

permitted payment of the amount of the instrument into court by way of discharge, such arrangement should be effective. The Commission, after deliberation, decided not to accept this proposal.

65. The proposal was made that article 68 (3) should also provide that, if the payer was notified of the claim of a third person to the instrument, such payer could make payment and be validly discharged unless the third person claiming the instrument provided security deemed adequate by the payer. After deliberation, the prevailing view in the Commission was against the acceptance of this proposal, which however should not prevent further consideration of this matter.

(n) Article 66 (2), (3): "rate of interest recoverable"

66. The Commission decided to postpone consideration of article 66 (2), (3) of the draft Convention which contains parts placed between brackets.

(o) Articles 1 (1), (2) and 2: "conflict of laws issues" 9/

67. There was support for the view that articles 1 and 2 as currently drafted did not resolve conflict of laws problems which might arise in regard to an instrument regulated by the proposed Convention. Under article 1, the Convention applied to an international bill of exchange as defined therein, which at the time of its issue contained in its text the words "international bill of exchange (Convention of ...)" inserted by the drawer. The idea underlying the Convention was that the instrument would then be regulated by the rules of the Convention, and that the drawer and persons other than the drawer would be bound by the provisions of the Convention by virtue of their signature on the instrument or by taking it up. While a condition for the application of the Convention was that at least two of the places indicated in article 1 (2) (e) be situated in different States, there was no requirement that these States be Contracting States (art. 2).

68. It was observed that the following difficulties might arise in the application of the Convention. It was unlikely that the circulation of the instrument would be limited to Contracting States; an action on an instrument might therefore be brought in a forum of a non-contracting State, which would not be bound to apply the Convention. While the drawer had chosen to subject the instrument to the provisions of the Convention, many legal systems did not recognize the principle of party autonomy in the context of negotiable instruments and would thus not permit a person to determine the law governing his rights and liabilities on such instruments. It was also observed that the choice given effect by a conflict of laws system was usually the choice of a national law, and not of a convention independent of a national law. Commercial circles would therefore be reluctant to use such instruments because the legal régime applicable to them would be uncertain. It was suggested that the uncertainty as to the application of the Convention might be reduced if certain further pre-conditions to its application were introduced (for example, that the country of the drawee must be a Contracting State, or that the place of payment must be situated in a Contracting State), as most disputes would probably be litigated in the country of the drawee or at the place of payment.

69. There was opposition to the idea of introducing further pre-conditions to the application of the Convention, on the ground that this would narrow the scope of application of the Convention. While it was recognized that difficulties might arise if a dispute in regard to an instrument to which the Convention applied arose

in a non-contracting State, it was observed that this problem would inevitably occur in the process of the adoption of uniform rules until the Convention containing the uniform rules was widely adopted. The proposal was made that the applicability of the rules of the Convention to persons other than the drawer by virtue of their signature on the instrument or by taking it up should be made clearer by a provision in article 1 to that effect. It was agreed that this proposal deserved consideration.

70. It was noted that the Hague Conference on Private International Law (Hague Conference) had on its agenda the revision of the Convention for the Settlement of Certain Conflicts of Laws in connection with Bills of Exchange and Promissory Notes, Geneva, 1930, but that work on this revision had been deferred pending the completion of work by the Commission on the draft Convention. There was wide agreement that the problems referred to with regard to the applicability of the proposed Convention should be addressed by the Hague Conference in the course of that revision, in co-operation with the Commission.

(p) Article 1 (2): "written instrument"

71. It was observed that while article 1 (2) of the draft Convention required an international bill of exchange to be a written instrument, the draft Convention did not contain a definition of writing. It was agreed that the need for such a definition should be considered.

(q) Article 1 (2) (a): "invocation of the Convention"

72. There was wide agreement that it should be easily recognizable that the drawer had invoked the application of the Convention by the words "international bill of exchange (Convention of ...)", and that the Convention was applicable. It was observed that the words invoking the application of the Convention might be in a language unfamiliar to persons to whom the bill was issued or transferred. Suggestions were made in regard to this issue e.g., that the bill should be in a standard form set forth in an annex to the Convention, or should be required to contain the words of invocation in a conspicuous manner or emphasized by a symbol or colour, or should be required to contain the words of invocation in a language widely used in international commerce such as English or French. It was agreed that this issue deserved consideration.

(r) Article 16: "clauses prohibiting further transfer"

73. It was noted that article 16 covered two different situations: (a) the drawer or the maker issues an instrument excluding its negotiability, and (b) an endorser makes a restrictive endorsement prohibiting further transfer. Doubts were expressed as to the appropriateness of combining these two situations, as it might lead to confusion and uncertainty about the legal effects of such clauses. It was suggested that the rule on restrictive endorsements should be dealt with separately, for instance in article 20.

74. A concern was expressed that the draft Convention, by introducing a category of instruments of a lower class which were not negotiable, could hamper transactions involving negotiable instruments. On the other hand, there was said to be a practical need in transactions between banks for instruments with restrictions as to further transfer, and the substance of the article should therefore be retained subject to drafting improvements.

75. The Commission concluded that the provision should be reviewed by dealing separately with the two situations and their respective legal effects.

(s) Article 46: "stipulation by drawer prohibiting presentment for acceptance"

76. Doubts were expressed as to the appropriateness of the faculty given to the drawer in article 46 to prohibit presentment of a bill for acceptance either generally or before a specified date or event. It was stated that such faculty was unjustified, and even inconsistent, at least in regard to the cases of mandatory acceptance regulated in article 45 (2). It was observed, for example, that the holder of a time bill may want to know, before maturity, whether the drawee will pay, and that denying this information to the holder would make the bill of less value. Another objection was that to allow the drawer to prohibit presentment "before the occurrence of a specified event" (art. 46 (1)) was in conflict with the requirement of "unconditional order" (art. 1 (2) (b)).

77. The Commission concluded that the article should be reviewed and revised in order to clarify the legal nature and effects of stipulations prohibiting presentment for acceptance, and that serious consideration should be given to limiting their application to cases of optional acceptance (i.e., art. 45 (1)).

(t) Article 51 (h): "presentment for payment at a clearing-house"

78. The Commission exchanged views on a proposal to add to article 51 (h) the words "if in conformity with the rules of that clearing-house". It was stated in support of that proposal that, without such amendment, the draft Convention would be potentially disruptive of local clearing arrangements. On the other hand, it was felt that there was no real need for expressing this qualification in view of the non-mandatory wording of paragraph (h), i.e., that an instrument "may be presented" at a clearing-house. It was also observed that the draft Convention need not necessarily yield to existing or future rules imposed by local clearing authorities for domestic instruments.

79. The Commission concluded that this proposal needed further consideration. It was agreed that article 51 (h) was of considerable practical importance and that consideration may be given to making use of the facility of a clearing-house also in other contexts envisaged in the draft Convention (in particular, Chapter six, section 1. Discharge by payment).

(u) Article 68 (4) (a): "delivery of instrument against payment"

80. A proposal was made to simplify the text of article 68 (4) (a) by deleting the special rule for the drawee in subparagraph (i). The Commission did not accept this proposal on the ground that the distinction between payment by the drawee and by any other person was justified.

81. It was thought, however, that paragraph (4) should be reviewed as to its appropriateness in cases of instruments payable by instalments on successive dates (art. 6 (b)) and in cases of partial payment (art. 69 (1)).

(v) Article 69 (1): "partial payment"

82. Divergent views were expressed as to the appropriateness of the rule contained in article 69 (1). Under one view, the holder should be obliged to take partial

payment since that would, at least to some extent, be in the interest of prior parties. Under another view, the holder should not be obliged to take partial payment so as to leave it to the holder, who was entitled to full payment, to decide whether or not to accept partial payment in accordance with his interests and assessment of the risks involved. The Commission concluded that this question needed further consideration.

4. Future work

83. The Commission considered the manner in which future work in regard to the draft Convention on International Bills of Exchange and International Promissory Notes might be undertaken. As regards the body within which the work should proceed, the view was expressed that the work might be completed solely within the Commission itself. Such a course might be possible because the Commission already had before it a detailed and well-considered draft Convention prepared by its working group. At the present session the Commission had taken certain major policy decisions and other decisions affecting the text, and the Commission could at a future session implement these decisions, perhaps with the assistance of draft texts proposed by the Secretariat reflecting these decisions.

84. There was wide agreement, however, that preparatory work had to be undertaken by a working group before the Commission again considered and finalized the draft Convention. Opinions were divided as to the optimum composition of such a working group. There was considerable support for the view that it should consist of all States members of the Commission. Such a composition would facilitate the participation by many States in the process of revision, and lead to a text which was generally acceptable. It was observed that if the revision were made by such a working group, the Commission itself should restrict its review of the revised draft Convention to significant general aspects. A detailed review by the Commission itself would lead to duplication of work.

85. The prevailing view was that the adoption of the draft Convention by the Commission should be preceded by a detailed examination of its provisions by the Commission itself. Adequate representation of States members of the Commission in the process of revision could only be assured at sessions of the Commission, since Governments may be less prepared, because of scarcity of financial resources, to send representatives to sessions of working groups. It followed from this view that the working group should have a limited membership. Its composition need not, however, be identical with that of the present working group on International Negotiable Instruments, and some expansion of that working group to achieve greater representation of States was desirable. It was also probable that a working group with a limited membership could proceed with the work more expeditiously and efficiently than one with a large membership.

86. There was general agreement that a decision as to the final action to be taken in relation to the draft Convention (e.g., a recommendation to the General Assembly to convene a Conference of Plenipotentiaries to adopt a convention) should only be taken by the Commission after it had considered the revised draft Convention submitted by the Working Group.

87. It was noted that the Arabic version of the text of the draft Convention was inadequate, in particular as regards the legal terminology used therein, and that it therefore had to be thoroughly revised.

Decision of the Commission

88. At its 299th and 301st meetings, on 5 and 6 July 1984, the Commission adopted the following decision:

The United Nations Commission on International Trade Law

1. Decides that:

(a) Further work should be undertaken with a view to improving the draft Convention on International Bills of Exchange and International Promissory Notes;

(b) Such further work is entrusted to the Working Group on International Negotiable Instruments, the composition of which is enlarged to consist of the following members: Australia, Cuba, Czechoslovakia, Egypt, France, India, Japan, Mexico, Nigeria, Sierra Leone, Spain, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America;

(c) The mandate of the Working Group is to revise the draft Convention on International Bills of Exchange and International Promissory Notes in the light of decisions and discussion at the present session, and also taking into account those comments of Governments and international organizations in documents A/CN.9/248 and A/CN.9/249/Add.1 which were not discussed at the present session;

(d) Work on the draft Convention on International Cheques is postponed, and that a decision as to further work on this draft Convention will be taken by the Commission after the completion of the work on the draft Convention on International Bills of Exchange and International Promissory Notes;

2. Requests the Working Group to submit a progress report to the eighteenth session of the Commission.

B. Electronic funds transfers 10/

89. The Commission, at its fifteenth session, had before it a report of the Secretary-General which considered several legal problems arising out of electronic funds transfers (A/CN.9/221). In the light of those legal problems, the report suggested that, as a first step, the Commission should prepare a guide on the legal problems arising out of electronic funds transfers. The guide, it was suggested, should be oriented towards providing guidance for legislators or lawyers preparing the rules governing particular systems for such funds transfers.

90. The Commission accepted this recommendation and requested the Secretariat to begin the preparation of a legal guide on electronic funds transfers in co-operation with the UNCITRAL Study Group on International Payments. 11/ At the current session the Commission had before it a report of the Secretary-General containing several draft chapters of the legal guide, which had been submitted to the Commission for general observations (A/CN.9/250 and Add.1-4).

91. The Secretariat informed the Commission that an additional chapter on finality of honour of a funds transfer instruction, which was currently in preparation, and a list of legal issues that should be considered in electronic funds transfer systems would be submitted to the Commission at its eighteenth session. The Secretariat suggested that the work completed to that point might be submitted to Governments and interested international organizations for their comments, even though further work on other issues might later be undertaken.

92. There was general agreement in the Commission that the draft chapters before the Commission already constituted an excellent beginning to the work in this field and laid the basis for the development of an international common understanding of the legal issues involved. It was noted that it would be premature to attempt to formulate uniform legal rules governing electronic funds transfers before an international common understanding on the subject had been reached. It was noted, however, that the establishment of such a common understanding through the legal guide might make it possible in the future to prepare concrete uniform rules in respect of certain aspects of electronic funds transfers.

93. It was also agreed that the Secretariat should be instructed to complete the work on this matter, and that at its eighteenth session the Commission should consider the question of further work on the topic.

CHAPTER III

INTERNATIONAL COMMERCIAL ARBITRATION

A. Draft model law on international commercial arbitration 12/

Introduction

94. The Commission, at its fourteenth session, decided to entrust the Working Group on International Contract Practices with the task of preparing a draft model law on international commercial arbitration. 13/ The Working Group carried out its task at its third, fourth, fifth, sixth and seventh sessions. 14/ The Working Group completed its work by adopting the text of a draft model law on international commercial arbitration at the close of its seventh session, 15/ after a drafting group had established corresponding language versions in the six languages of the Commission.

95. The Commission had before it the reports of the Working Group on International Contract Practices on the work of its sixth and seventh sessions (A/CN.9/245 and A/CN.9/246).

Discussion at the session

96. The Commission took note of the reports of the Working Group on International Contract Practices on the work of its sixth and seventh sessions, and expressed its appreciation to the Working Group for having completed its task by preparing a sound and acceptable text for consideration by the Commission.

97. The Commission was in agreement that the draft text of a model law on international commercial arbitration should immediately be sent to all Governments and interested international organizations for their comments. While recognizing the need for extensive consultations on the draft text, the Commission was agreed that any comments should be submitted not later than 30 November 1984. This would allow the Secretariat to prepare the required analytical compilation of the comments sufficiently early to enable the compilation to be distributed well in advance of the eighteenth session of the Commission.

98. The Commission agreed that the draft model law on international commercial arbitration should be considered at its eighteenth session with a view to finalizing and adopting the text of a model law on international commercial arbitration. It was felt that for such consideration a period of two to three weeks of that session would be needed, depending on the nature of the comments by Governments and international organizations.

99. The Commission agreed that all matters of substance should be reserved for the eighteenth session, including consideration of proposals made at its present session, to include in a preamble to the model law a reference to conciliation, and to clarify the territorial criterion for the applicability of the model law.

100. A suggestion was made that the Secretariat should prepare a commentary on the draft model law which would assist Governments in preparing their comments on the draft text and later in their consideration as to any legislative action based on the model law. While recognizing the usefulness of a commentary, the Commission agreed that such a commentary could not be prepared in time to be of assistance to Governments in preparing their comments, but was of the view that such a commentary should be submitted to the eighteenth session of the Commission.

Decision of the Commission

101. At its 285th and 304th meetings, on 25 June and 10 July 1984, the Commission adopted the following decision:

The United Nations Commission on International Trade Law

1. Expresses its appreciation to its Working Group on International Contract Practices for having completed its task by adopting the draft text of a model law on international commercial arbitration;

2. Requests the Secretary-General to transmit the draft text of a model law on international commercial arbitration to all Governments and interested international organizations for their comments, which should be submitted not later than 30 November 1984;

3. Requests the Secretariat to prepare an analytical compilation of the comments received, and to distribute this compilation well in advance of the eighteenth session of the Commission;

4. Requests the Secretariat to submit to the eighteenth session of the Commission a commentary on the draft text of a model law on international commercial arbitration;

5. Decides to consider, at its eighteenth session, the draft text of a model law on international commercial arbitration in the light of comments received from Governments and interested international organizations, with a view to finalizing and adopting the text of a model law on international commercial arbitration.

B. UNCITRAL Arbitration Rules 16/

102. The Commission noted that the UNCITRAL Arbitration Rules, before their adoption at the ninth session of the Commission (1976), had been reviewed by a drafting group only in those languages which then were the official languages of the Commission (i.e., English, French, Russian and Spanish). Although subsequently translations into the Arabic and Chinese languages, which had become official languages of the General Assembly, were prepared, these translations were found to be in need of revision, in particular as regards the legal terminology used therein.

103. The Commission, at its current session, had before it revised versions of the Arabic and Chinese texts, which had been prepared by the Secretariat with the assistance of experts. As regards the Arabic text, it was noted that some minor modifications were desirable. The Commission accordingly entrusted to an ad hoc working party composed of States using the Arabic language the task of making these modifications.

Decision of the Commission

104. The Commission, at its 301st meeting, on 6 July 1984, adopted the Arabic text (as modified by the ad hoc working party) and the Chinese text of the UNCITRAL Arbitration Rules. These texts as adopted are set forth in annex I to the Arabic and Chinese versions, respectively, of the present report.

CHAPTER IV

LIABILITY OF OPERATORS OF TRANSPORT TERMINALS 17/

Introduction

105. The Commission, at its sixteenth session, decided to include the topic of liability of operators of transport terminals in its programme of work, to request the International Institute for the Unification of Private Law (UNIDROIT) to transmit its preliminary draft Convention on that subject to the Commission for its consideration, and to assign work on the preparation of uniform rules on that subject to a Working Group. The Commission deferred to its current session the decision on the composition of the Working Group. 18/

106. The Commission had before it a report of the Secretary-General on the liability of operators of transport terminals which had been requested by the Commission at its sixteenth session 19/ (A/CN.9/252). The report discussed some of the major issues which arose from the UNIDROIT preliminary draft Convention and which might merit consideration in the formulation by the Commission of uniform rules on this topic. Annexed to the report was the text of the UNIDROIT preliminary draft Convention.

Discussion at the session

107. It was noted that work by the Commission on this topic would be a logical sequence to its work in the field of carriage of goods by sea, which had led to the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) (the Hamburg Rules).

108. It was generally agreed that the task of formulating uniform legal rules on the liability of operators of transport terminals should be assigned to the Working Group on International Contract Practices, which was composed of all members of the Commission. A suggestion was made that the Working Group should begin its work by considering approaches to be adopted with respect to issues arising in connection with the liability of operators of transport terminals, and then proceed to the drafting of the uniform rules. It was generally agreed, however, that the method of work of the Working Group should be determined by the Working Group itself.

109. Views were expressed concerning certain issues of substance arising from the UNIDROIT preliminary draft Convention. Such views included the following: that the scope of the uniform rules should be limited to the safe-keeping of goods related to international transport and that the rules should define the degree and nature of that relationship; that the uniform rules should not cover the activities of freight forwarders who acted as principals for shippers; that consideration should be given to various types of operations performed by terminal operators in connection with different types of transport; that terminal operators should have a lien over goods taken in charge by them to protect their ability to recover their fees, but that a provision should be included to balance against that protection the rights of parties entitled to receive the goods; that a provision whereby the uniform rules could be applied by a State only against terminal operators agreeing to be bound by the rules would be appropriate for a model law, but not for a convention; that the issuance of a document by a terminal operator should not be compulsory; and that the negotiability of such a document, if issued, should be left to the agreement of the parties.

110. Views were also expressed that the Working Group should consider certain issues not dealt with in the UNIDROIT preliminary draft Convention. Such views included the following: that the Working Group should consider the question of jurisdiction over claims against operators of transport terminals, and the question of whether a carrier should be obligated to notify a terminal operator of loss of or damage to goods handed over to the carrier by the terminal operator; that the Working Group should consider whether the uniform rules should provide for suspension of the limitation period for claims against terminal operators, and whether the uniform rules should deal with obligations of customers toward terminal operators (e.g., to pay their fees, and to inform them as to dangerous goods), as well as the right of terminal operators not to accept dangerous goods.

111. The observer of the United Nations Conference on Trade and Development (UNCTAD) informed the Commission that the Conference, by its resolution 144 (VI), paragraph 9, had requested its Secretary-General to prepare for its Committee on Shipping a study on the rights and duties of container terminal operators and users, and that a copy of that study would be made available to the Working Group of the Commission to which would be assigned the task of preparing uniform rules on the liability of operators of transport terminals. He also stated that the UNCTAD secretariat looked forward to participating actively in the work of the Working Group.

112. The Commission expressed its appreciation of the statement by the representative of UNCTAD. In view of the experience and expertise of UNCTAD in maritime and multimodal transport, port operations and various aspects of containerization, and the relevance of this experience and expertise to issues concerning the proposed uniform rules, the Commission welcomed the prospect of further co-operation between the Commission and UNCTAD in the development of the uniform rules.

Decision of the Commission

113. The Commission decided to assign to its Working Group on International Contract Practices the task of formulating uniform legal rules on the liability of operators of transport terminals. It further decided that the mandate of the Working Group should be to base its work on document A/CN.9/252 and on the UNIDROIT preliminary draft Convention and the Explanatory Report thereto prepared by UNIDROIT, and that the Working Group should also consider issues not dealt with in the UNIDROIT preliminary draft Convention, as well as any other issues which it considered to be relevant.

CHAPTER V

NEW INTERNATIONAL ECONOMIC ORDER: INDUSTRIAL CONTRACTS 20/

Introduction

114. The Commission had before it the report of its Working Group on the New International Economic Order on the work of its fifth session (A/CN.9/247). The report set forth the deliberations of the Working Group on the basis of the report of the Secretary-General entitled "Draft legal guide on drawing up contracts for industrial works" (A/CN.9/WG.V/WP.11 and Add.1-9). The Working Group also had before it a sample draft chapter on Termination (A/CN.9/WG.V/WP.9/Add.5) which had not been considered at the fourth session of the Working Group. The report noted that the Working Group had considered the format of the legal guide (A/CN.9/WG.V/WP.11/Add.9), and draft chapters on Variation clauses (A/CN.9/WG.V/WP.11/Add.6), Assignment (A/CN.9/WG.V/WP.11/Add.7), Suspension of construction (A/CN.9/WG.V/WP.11/Add.8), Termination (A/CN.9/WG.V/WP.9/Add.5), Inspection and tests (A/CN.9/WG.V/WP.11/Add.1) and Failure to perform (A/CN.9/WG.V/WP.11/Add.1-3). The Working Group had also held an exchange of views on the draft chapter on Damages (A/CN.9/WG.V/WP.11/Add.4), and postponed for the next session consideration of the draft chapter on Liquidated damages and penalty clauses (A/CN.9/WG.V/WP.11/Add.5).

115. The Working Group was in agreement that, in its final form, the legal guide should be so arranged as to enable a reader readily to identify the parts of the legal guide dealing with a particular issue. It was also agreed that the utility of the legal guide would be enhanced if each chapter were preceded by a summary, and also contained illustrative provisions where necessary as an aid to drafting contract clauses. The Working Group proposed that, in order to expedite the work, two sessions of the Working Group should be held each year, if the course of the work so permitted.

Discussion at the session

116. The Commission expressed its satisfaction with the work thus far accomplished in regard to the preparation of the legal guide, and expressed its appreciation to the Working Group and its Chairman for their conduct of the work. There was general agreement that, in order to expedite the work, two sessions of the Working Group should be held prior to the eighteenth session of the Commission.

117. The view was expressed that the legal guide should examine the different possible approaches to resolving particular difficulties, and should in its recommended solutions seek to achieve a balance between the interests of the two parties to an international industrial contract. It was also noted that, in order to be of practical help, the legal guide should provide clear solutions, supported where necessary with illustrative provisions which could be used by the parties as a basis for drafting. It was also observed that the legal guide should be of a size and format which would enable its convenient use.

118. There was support for the view that the future work programme of the Working Group needed consideration. It was suggested that the legal aspects of joint ventures or consortia, and contracts for industrial co-operation, might be considered as possible items for such work programme.

CHAPTER VI

CO-ORDINATION OF WORK

A. General co-ordination of activities 21/

119. The Commission had before it a report of the Secretary-General which set forth the main activities of the secretariat for the purpose of co-ordination of work in the field of international trade law since the sixteenth session (A/CN.9/255). Representatives of a number of international organizations active in the field of international trade law reported to the Commission on the co-operation between their organizations and the Commission.

120. The observer from the Asian-African Legal Consultative Committee referred to the continuous relationship which the Committee had enjoyed with the Commission since 1970. The Committee has recommended that Governments in the Asian-African region should consider ratification or adherence to the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) (the Hamburg Rules) and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). It was noted that the Committee had recommended the use of the UNCITRAL Arbitration Rules and that the regional arbitration centres at Kuala Lumpur and Cairo used the UNCITRAL Arbitration Rules with certain modifications to govern arbitrations conducted by those arbitration centres. The director of the Centre on International Arbitration in Cairo made a statement on the functions of the centre and on its rules.

121. The observer from the United Nations Conference on Trade and Development (UNCTAD) noted that, in addition to the co-operation in the field of terminal operators, between the Secretariats of UNCTAD and the Commission, there was also a continuing contact in the field of legal implications of automatic data processing. He also noted that the UNCTAD secretariat had followed with interest the work of the Commission in the field of industrial contracts.

122. The observer from the International Institute for the Unification of Private Law (UNIDROIT) reported that its Governing Council had decided to create a Committee of Government Experts to consider the Preliminary Draft Rules on International Factoring, and a second Committee of Government Experts to consider the Preliminary Draft Rules on International Financial Leasing. The Governing Council had decided to invite all States members of the Commission, including those which are not members of UNIDROIT, to participate in the work of these Committees of Government Experts. It was also noted that UNIDROIT appreciated the decision of the Commission to undertake work on the liability of operators of transport terminals on the basis of the preliminary draft Convention prepared by UNIDROIT. UNIDROIT would desire to remain associated with the Commission's work on this topic.

123. The observer from the Hague Conference on Private International Law (Hague Conference) reported that the Diplomatic Conference to consider the draft Convention on the Law Applicable to Contracts for the International Sale of Goods would be held from 14 to 30 October 1985. Invitations to the Diplomatic Conference had been sent by the Government of the Netherlands to all States, including States which are not members of the Hague Conference. He also reported that the fifteenth session of the Hague Conference in October 1984 would consider whether the subject of the law applicable to arbitration clauses should be placed on the agenda of the

sixteenth session of the Hague Conference in 1988. In addition, in the light of discussions which had taken place in the Commission's Working Group on International Contract Practices, the Hague Conference will consider whether the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, the Hague, 1970, could be extended in order to permit arbitrators to forward directly to courts or authorities in a place other than that where the arbitration proceedings are taking place requests for the taking of evidence.

124. The Commission expressed its appreciation for the co-operation shown by the other organizations active in the field of international trade law. During the discussion it was suggested that the Commission urge States to accept the invitations extended by UNIDROIT and the Hague Conference.

B. Revision of the Uniform Customs and Practice for Documentary Credits 22/

125. The Commission had before it a report of the Secretary-General concerning the 1983 revision of the Uniform Customs and Practice for Documentary Credits (UCP) by the International Chamber of Commerce (ICC) (A/CN.9/251). The report pointed out that the subject of documentary credits had been on the Commission's priority list of topics since 1968 and that the Commission at its second session in 1969 had recommended to Governments the 1962 version of UCP, while at its eighth session in 1975 it had recommended the use of the 1974 version of UCP.

126. The report further pointed out that developments in documentary credit practice since 1974, and especially those brought about by changes in transport technology and documentation and the increased use of stand-by letters of credit, had led to a revision of the 1974 version of UCP by ICC. In order to permit interested circles in countries not represented in ICC to make observations on the operation of UCP so that these could be taken into account in the revision, the Secretary-General, in accordance with past practice on this subject, had addressed to all Governments the same questionnaire as was sent by ICC to its National Committees and had transmitted the replies received to ICC for its consideration. After adoption of the 1983 version of UCP by the Council of ICC on 21 June 1983 with an effective date of 1 October 1984, ICC had forwarded the text to the Commission with a request that the Commission consider recommending its use in international trade, as had been done in respect of the 1962 and 1974 versions.

Discussion at the session

127. The observer of ICC expressed the appreciation of ICC for the support given by the Commission in the past and for the aid in preparing the current revision. After explaining a number of the modifications to UCP contained in the 1983 revision, he indicated the desire of ICC that the Commission should endorse the use of the 1983 version, as it had endorsed the use of the previous versions.

128. It was noted by the Commission that UCP had been one of the most successful efforts in the unification of international trade law. Several delegations reported that the banks in their countries had already decided to apply the 1983 version of UCP when it becomes effective on 1 October 1984. After expressing its appreciation of the continuing co-operation which the Commission had enjoyed with ICC, the Commission was agreed that ICC should be congratulated on its work in

adjusting the rules governing documentary credits to the changes taking place in international trade.

Decision of the Commission

129. At its 301st meeting, on 6 July 1984, the Commission adopted the following decision:

The United Nations Commission on International Trade Law,

Expressing its appreciation to the International Chamber of Commerce for having transmitted to it the revised text of "Uniform Customs and Practice for Documentary Credits", which was approved by the Commission on Banking Technique and Practice of the International Chamber of Commerce and adopted by the Council of the International Chamber of Commerce on 21 June 1983,

Congratulating the International Chamber of Commerce on having made a further contribution to the facilitation of international trade by bringing up to date its rules on documentary credit practice to allow for developments in transport technology and changes in commercial practices,

Having regard to the fact that, in revising the 1974 text of "Uniform Customs and Practice for Documentary Credits", the International Chamber of Commerce has taken into account the observations made by Governments and banking and trade institutions of countries not represented within it and transmitted to it through the Commission,

Noting that "Uniform Customs and Practice for Documentary Credits" constitutes a valuable contribution to the facilitation of international trade,

Commends the use of the 1983 revision, as from 1 October 1984, in transactions involving the establishment of a documentary credit.

C. Current activities of international organizations in the field of barter and barter-like transactions 23/

130. The Commission, at its twelfth session, requested the Secretariat to include in the studies then being conducted in respect of contract practices consideration of clauses of particular importance in barter-like transactions. 24/ The Commission also requested the Secretariat to approach other organizations within the United Nations engaged in studies on such transactions, and to report to it on the work being undertaken by those organizations.

131. The Commission had before it, at its seventeenth session, a report of the Secretary-General which reported on the activities of other organizations within and outside the United Nations relative to barter-like transactions. The report noted that the Secretariat would continue to monitor developments in this field.

132. There was general agreement that the report was a useful summary of current activities in this field. A number of delegations indicated that they attached great importance to this subject and that further consideration of it would be useful. It was agreed that, in the light of a report to be submitted by the Secretariat at a future session on the developments in this field, the Commission may consider whether concrete steps in the field should be undertaken by it.

D. Legal aspects of automatic data processing 25/

Introduction

133. The Commission, at its sixteenth session, had before it a note by the Secretariat which conveyed in an annex a report on the legal aspects of automatic data processing of the Working Party on Facilitation of International Trade Procedures which is jointly sponsored by the Economic Commission for Europe and the United Nations Conference on Trade and Development (A/CN.9/238). The report of the Working Party described legal problems which arose in the teletransmission of trade data and suggested actions which might be undertaken by various international organizations in their respective areas of competence. The report of the Working Party suggested that, since the problems were essentially those of international trade law, the Commission as the core legal body in the field of international trade law appeared to be the appropriate central forum to undertake and co-ordinate the necessary action. The Commission took note of the intention of the Secretariat to submit to the seventeenth session a report on this subject. 26/

134. The Commission had before it at the present session a report of the Secretary-General which described several legal problems arising out of the use of automatic data processing in international trade (A/CN.9/254). The report suggested that in the light of these problems, the Commission might wish to place the subject of the legal implications of automatic data processing to the flow of international trade on its programme of work as a priority item.

135. It was noted that automatic data processing is being increasingly used in connection with international trade and that the Commission was likely to encounter legal problems arising out of the use of automatic data processing in many aspects of its future activities. It was suggested that it would be important for the Commission to take leadership in that field.

Decision of the Commission

136. It was decided to place the subject on the programme of work as a priority item. A decision would be made at the eighteenth session of the Commission whether to refer the subject to a Working Group for the purpose of identifying areas where solutions or the establishment of international common understanding would be desirable.

CHAPTER VII

TRAINING AND ASSISTANCE 27/

Introduction

137. At its sixteenth session, 28/ the Commission decided that it would be desirable to continue the sponsorship of symposia and seminars on international trade law in collaboration with other organizations. It also affirmed the importance of regional symposia and seminars, both for the purpose of promoting the work of the Commission, and for the purpose of making participants, particularly from developing countries, aware of current legal problems of international trade. The Commission approved the approach taken by the Secretariat in organizing symposia and seminars.

138. By its resolution 38/134 of 19 December 1983 on the report of the Commission on the work of its sixteenth session, the General Assembly reaffirmed the importance, in particular for developing countries, of the work of the Commission concerned with training and assistance in the field of international trade law. It also reaffirmed the desirability for the Commission to sponsor symposia and seminars, in particular those organized on a regional basis, to promote training and assistance in the field of international trade law. The General Assembly also expressed its appreciation to Governments and institutions for arranging symposia and seminars, and invited Governments, relevant United Nations organs, organizations, institutions and individuals to assist the Secretariat in financing and organizing symposia and seminars.

139. The Commission had before it a report of the Secretary-General on training and assistance (A/CN.9/256), which described the measures taken by the Secretariat to implement the decisions of the Commission and of the General Assembly. The report noted, in particular, the association of the Secretariat with the holding of several regional seminars in developing countries. A workshop on the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) had been held at the biennial conference of the Law Association for Asia and the Western Pacific (Manila, Philippines, 9-13 September 1983). The Secretariat collaborated with the Chamber of Industry of the Ivory Coast, the Economic Community of West Africa and the International Chamber of Commerce in the holding of an international conference (Abidjan, 21-23 November 1983) on the techniques of international commerce. A regional symposium on arbitration had been organized (New Delhi, 12-14 March 1984) by the Asian-African Legal Consultative Committee (AALCC) and the Secretariat, in co-operation with the Indian Council of Arbitration.

140. The report noted that on several occasions other than those noted above, the Secretariat had participated in symposia and seminars which dealt with the work of the Commission, and that the Secretariat intended to keep in touch with Governments and organizations with a view to collaborating with them in organizing symposia and seminars.

Discussion at the session

141. The Commission expressed its appreciation of the efforts undertaken in this field by the Secretariat which were reflected in the report (A/CN.9/256), and approved the general approach taken by the Secretariat in this area. There was

wide agreement that the sponsorship of regional symposia and seminars on international trade law in general and the activities of the Commission in particular should be continued and strengthened. It was stressed that such symposia and seminars were of very great benefit to lawyers and businessmen in developing countries. In this connection, the view was expressed that special efforts should be made to organize such symposia and seminars in Africa in order to disseminate in Africa information on the activities of the Commission.

142. A statement was made by the representative of Australia that an Asian- Pacific Regional Trade Law Seminar would be conducted in Canberra, Australia, from 22 to 27 November 1984, by the Attorney-General's Department of Australia, in association with the UNCITRAL Secretariat and the AALCC. The International Institute for the Unification of Private Law and the Hague Conference on Private International Law would also participate. The seminar would have as its theme the unification and harmonization of international trade law and practices with particular reference to the work and role of the Commission. The Seminar would be specially designed to contribute to the Commission's programme in training and assistance, and the Government of Australia would provide fellowships for participants from the region.

143. The Commission expressed its deep appreciation for the efforts of the Government of Australia in support of the Commission's training and assistance programme in the Asian-Pacific region, and also expressed its appreciation to all Governments and international organizations which had assisted the Secretariat in the organization of regional symposia and seminars.

CHAPTER VIII

STATUS OF CONVENTIONS 29/

144. The Commission considered the status 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) (hereinafter referred to as "the Limitation Convention"); 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) (hereinafter referred to as "the Hamburg Rules"); and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (hereinafter referred to as "the Sales Convention"). The Commission had before it a note by the Secretary-General on the status of these Conventions, which set forth the status of signatures, ratifications and accessions to these Conventions (A/CN.9/257).

145. Several States indicated that the question of adhering to the Sales Convention was under active consideration within their Governments and that the prospects of adherence were favourable.

146. The Secretary of the Commission noted the recommendation of the Commission on International Contract Practices of the International Chamber of Commerce (ICC) that the national committees of ICC should approach their respective Governments to encourage their adherence to the Sales Convention. He also noted that a conference of the Law Association for Asia and the Western Pacific held in September 1983 had adopted a resolution urging Governments in the Asian-Pacific region to disseminate information about the Sales Convention with a view to ensuring adherence to the Convention within the shortest possible time. The Secretary of the Commission expressed the hope that the increasing interest in the Sales Convention would generate increased interest in the Limitation Convention.

147. With regard to the Hamburg Rules, the Secretary of the Commission expressed the hope that the work of the Commission on the topic of liability of operators of transport terminals would generate increased interest in the Hamburg Rules. The Commission noted with appreciation the statement of the observer of the United Nations Conference on Trade and Development that UNCTAD was prepared to co-operate with the Commission to ensure early ratification and implementation of the Hamburg Rules, for example by organizing regional seminars.

CHAPTER IX

RELEVANT GENERAL ASSEMBLY RESOLUTIONS, FUTURE WORK AND OTHER BUSINESS 30/

A. Relevant General Assembly resolutions

1. General Assembly resolution on the work of the Commission

148. The Commission took note with appreciation of General Assembly resolution 38/134 of 19 December 1983, on the report of the Commission on the work of its sixteenth session.

2. General Assembly resolution on uniform rules on contract clauses for an agreed sum due upon failure of performance

149. The Commission took note with appreciation of General Assembly resolution 38/135 of 19 December 1983, on uniform rules on contract clauses for an agreed sum due upon failure of performance.

3. General Assembly resolution on international economic law

150. The Commission took note of General Assembly resolution 38/128 of 19 December 1983 on the progressive development of the principles and norms of international law relating to the new international economic order. It also took note that the Secretariat had conveyed to the United Nations Institute for Training and Research (UNITAR) information on the activities of the Commission relevant to the study being conducted by UNITAR on this issue.

B. Date and place of the eighteenth session of the Commission

151. It was decided that the Commission would hold its eighteenth session from 3 to 21 June 1985 at Vienna.

C. Sessions of the Working Groups

152. It was decided that the Working Group on International Contract Practices would hold its eighth session from 3 to 14 December 1984 at Vienna.

153. It was decided that the Working Group on International Negotiable Instruments would hold its thirteenth session from 7 to 18 January 1985 in New York.

154. It was decided that the Working Group on the New International Economic Order would hold its sixth session from 10 to 21 September 1984 at Vienna and its seventh session from 8 to 19 April 1985 in New York.

D. Other business

155. A view was expressed that legal texts and other documents emanating from the work of the Commission should receive wider dissemination. In addition, a suggestion was made that means should be explored to disseminate court and arbitral decisions concerning legal texts elaborated by the Commission.

156. The Secretary of the Commission noted that the large bibliography in the UNCITRAL Yearbook of publications relating to the work of the Commission indicated widespread interest in this work. He also stated that it was expected that preparation of the book on UNCITRAL, which had already been authorized by the Commission, was expected to be completed in 1985. This book would include all legal texts which had been elaborated by the Commission. The Secretary of the Commission also noted that the publication of the UNCITRAL Yearbook and the book on UNCITRAL would be accommodated within the regular budget.

157. The Commission requested that the Secretariat attempt to expedite publication of the UNCITRAL Yearbook.

158. The view was expressed that in view of the financial difficulties encountered by some States in participating in sessions of the Commission and of its Working Groups the Secretariat should explore the most efficient means for the scheduling of sessions and for the utilization of time at the sessions.

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, 19 were elected by the Assembly at its thirty-fourth session on 9 November 1979 (decision 34/308) and 17 were elected by the Assembly at its thirty-seventh session on 15 November 1982 (decision 37/308). Pursuant to resolution 31/99 of 15 December 1976 the term of those members elected by the Assembly at its thirty-fourth session will expire on the last day prior to the opening of the nineteenth regular annual session of the Commission in 1986, while 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.

2/ The elections took place at the 285th and 293rd meetings, on 25 and 29 June 1984. 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 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/ The Commission considered this subject at its 285th, to 299th meetings, from 25 to 29 June and on 2, 3 and 5 July 1984. Summary records of these meetings are contained in documents A/CN.9/SR.285-299.

Notes (continued)

4/ Report of the United Nations Commission on International Trade Law on the work of its fifteenth session, Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 17 (A/37/17), para. 50.

5/ Report of the United Nations Commission on International Trade Law on the work of its sixteenth session, Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17 (A/38/17), paras. 80-81.

6/ That decision was taken by the Commission after concluding its deliberations on the major controversial issues set forth in paras. 21-38, below. Pursuant to that decision, the Commission did not consider issues specially relating to international cheques.

7/ References to the draft Convention are to the draft Convention on International Bills of Exchange and International Promissory Notes, and references to articles are to those of that draft Convention.

8/ This issue was set forth in document A/CN.9/249/Add.1.

9/ These issues, and the issues discussed below, were not set forth in document A/CN.9/249.

10/ The Commission considered this subject at its 299th meeting, on 5 July 1984.

11/ Report of the United Nations Commission on International Trade Law on the work of its fifteenth session, Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 17 (A/37/17), para. 73.

12/ The Commission considered this subject at its 285th meeting, on 25 June 1984.

13/ Report of the United Nations Commission on International Trade Law on the work of its fourteenth session, Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 17 (A/36/17), para. 70 (Yearbook of the United Nations Commission on International Trade Law, vol. XII: 1981, (United Nations publication, Sales No. E.82.V.6), part one, A, para. 70).

14/ Reports on the work of these sessions are contained in documents A/CN.9/216, A/CN.9/232, A/CN.9/233, A/CN.9/245 and A/CN.9/246.

15/ The draft text of a model law on international commercial arbitration is contained in the annex to document A/CN.9/246.

16/ The Commission considered this subject at its 285th, 300th and 301st meetings, on 25 June and 5 and 6 July 1984.

17/ The Commission considered this subject at its 300th meeting, on 5 July 1984.

18/ Report of the United Nations Commission on International Trade Law on the work of its sixteenth session, Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17 (A/38/17), para. 115.

19/ Ibid.

20/ The Commission considered this subject at its 301st meeting, on 6 July 1984.

21/ The Commission considered this subject at its 302nd meeting, on 6 July 1984.

22/ The Commission considered this subject at its 301st meeting, on 6 July 1984.

23/ The Commission considered this subject at its 302nd meeting, on 6 July 1984.

24/ 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. 23 (Yearbook of the United Nations Commission on International Trade Law, vol. X: 1979, (United Nations publication, Sales No. E.81.V.2), part one, II, A, para. 23).

25/ The Commission considered this subject at its 300th meeting, on 5 July 1984.

26/ Report of the United Nations Commission on International Trade Law on the work of its sixteenth session, Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17 (A/38/17), para. 118.

27/ The Commission considered this subject at its 302nd meeting, on 6 July 1984.

28/ Report of the United Nations Commission on International Trade Law on the work of its sixteenth session, Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 17 (A/38/17), para. 130.

29/ The Commission considered this subject at its 302nd meeting, on 6 July 1984.

30/ The Commission considered these subjects at its 301st and 302nd meetings, on 6 July 1984.

ANNEX I

UNCITRAL Arbitration Rules

[For the printed text, see Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17), pp. 35-50.]

ANNEX II

List of documents of the session

A. General series

A/CN.9/244 and Corr.1	Provisional agenda
A/CN.9/245	Report of the Working Group on International Contract Practices on the work of its sixth session (Vienna, 29 August-9 September 1983)
A/CN.9/246	Report of the Working Group on International Contract Practices on the work of its seventh session (New York, 6-17 February 1984)
A/CN.9/247	Report of the Working Group on the New International Economic Order on the work of its fifth session (New York, 23 January-3 February 1984)
A/CN.9/248	Draft Convention on International Bills of Exchange and International Promissory Notes and draft Convention on International Cheques: analytical compilation of comments by Governments and international organizations
A/CN.9/249 and Add.1	Draft Convention on International Bills of Exchange and International Promissory Notes and draft Convention on International Cheques: major controversial and other issues
A/CN.9/250 and Add.1-4	Draft legal guide on electronic funds transfers
A/CN.9/251	Uniform customs and practice for documentary credits
A/CN.9/252	Liability of operators of transport terminals
A/CN.9/253	Current activities of international organizations in the field of barter and barter-like transactions
A/CN.9/254	Co-ordination of work: legal aspects of automatic data processing
A/CN.9/255	Co-ordination of work: in general
A/CN.9/256	Training and assistance
A/CN.9/257	Status of conventions

B. Restricted series

A/CN.9/XVII/CRP.1 and Add.1-13	Draft report of the United Nations Commission on International Trade Law on the work of its seventeent session (New York, 25 June-11 July 1984)

C. Information series

A/CN.9/XVII/INF.1	Provisional list of participants