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Fifteenth Session
New York, 26 July - 6 August 1982

REPORT

OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS FIFTEENTH SESSION *

26 July - 6 August 1982

* The report has also been issued under the symbol A/37/17.

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INTRODUCTION

1. The present report of the United Nations Commission on International Trade Law covers the Commission's fifteenth session, held in New York from 26 July to 6 August 1982.

2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the General Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

CHAPTER I

ORGANIZATION OF THE SESSION

A. Opening

3. The United Nations Commission on International Trade Law (UNCITRAL) commenced its fifteenth session on 26 July 1982. The session was opened on behalf of the Secretary-General by Mr. Erik Suy, the Legal Counsel.

B. Membership and attendance

4. General Assembly resolution 2205 (XXI) established the Commission with a membership of 29 States, elected by the Assembly. By resolution 3108 (XXVIII), the General Assembly increased the membership of the Commission from 29 to 36 States. The present members of the Commission, elected on 15 December 1976 and 9 November 1979, are the following States: 1/

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

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

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

5. With the exception of Burundi, Cyprus and Senegal, all members of the Commission were represented at the session.

6. The session was also attended by observers from the following States: Argentina, Bahamas, Belgium, Bolivia, Brazil, Bulgaria, Burma, Canada, China, El Salvador, Ireland, Israel, Jamaica, Mexico, Netherlands, Paraguay, Portugal, Republic of Korea, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Turkey, Venezuela 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 Centre on Transnational Corporations, United Nations Conference on Trade and Development, United Nations Industrial Development Organization and United Nations Institute for Training and Research.

(b) Specialized agency

International Monetary Fund.

(c) Intergovernmental organizations

Asian-African Legal Consultative Committee, Council of Europe, Hague Conference on Private International Law, Inter-American Commercial Arbitration Commission, International Institute for the Unification of Private Law and Organization of American States.

(c) International non-governmental organizations

International Air Transport Association, International Bar Association, International Chamber of Commerce, International Law Association and International Maritime Committee.

C. Election of officers

8. The Commission elected the following officers: 2/

Chairman: Mr. R. Eyzaguirre (Chile)

Vice-Chairmen: Mr. A. Duchek (Austria)
Mr. F. M. Sami (Iraq)
Mr. H. M. J. Smart (Sierra Leone)

Rapporteur: Mr. F. Enderlein (German Democratic Republic)

D. Agenda

9. The agenda of the session, as adopted by the Commission at its 252nd meeting, on 26 July 1982, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. International contract practices.
5. International payments.
6. International commercial arbitration.
7. New international economic order: industrial contracts.
8. Co-ordination of work.
9. Status of conventions.
10. Training and assistance in the field of international trade law.

11. Most-favoured-nation clauses.

12. Future work.

13. Relevant General Assembly resolutions. 3/

14. Other business.

15. Adoption of the report of the Commission.

E. Decisions of the Commission

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

F. Adoption of the report

11. The Commission adopted the present report at its 268th meeting, on 6 August 1982.

CHAPTER II

INTERNATIONAL CONTRACT PRACTICES: UNIFORM RULES ON LIQUIDATED DAMAGES AND PENALTY CLAUSES 4/

Introduction

12. At its twelfth session, the Commission requested its Working Group on International Contract Practices to consider the feasibility of formulating uniform rules on liquidated damages and penalty clauses applicable to a wide range of international trade contracts. 5/ At its fourteenth session, the Commission considered the draft uniform rules proposed by the Working Group and requested the Secretary-General to incorporate in the rules such supplementary provisions as might be required if the rules were to take the form of a convention or a model law, to prepare a commentary on the rules, to prepare a questionnaire addressed to Governments and international organizations seeking to elicit their views on the most appropriate form for the rules and to circulate the rules to all Governments and interested international organizations for their comments, together with the commentary and the questionnaire. 6/

13. At its present session the Commission had before it the draft uniform rules with the required supplementary provisions and the commentary (A/CN.9/218), together with an analysis of the responses of Governments and international organizations to the questionnaire and of their comments on the draft uniform rules (A/CN.9/219 and Add.1).

Discussion at the session 7/

Appropriate form for the rules

14. The Commission commenced its deliberations by considering whether the rules should be embodied in a convention, a model law or in general conditions. There was general agreement that a convention provided the most effective form of unification. In opposition to a convention, it was noted that in recent years several conventions had not entered into force because a sufficient number of States had not adhered to them partly due to the fact that under the constitutions of some States the procedure to be followed for adhering to a convention was time-consuming and difficult. It was also noted that a convention was not as suitable as a model law for dealing with one aspect of the law of contract closely connected with other aspects not dealt with in the convention and that the considerable cost associated with the adoption of a convention might not be justified when only the unification of a limited area was accomplished. On the other hand, it was indicated that the cost of adopting the convention might not be so great if the convention were adopted by the General Assembly on the recommendation of the Sixth Committee, that is without convening a special conference.

15. The majority view supported the form of a model law. Such a law would be useful for countries, in particular for developing countries, in revising their law on the subject. When adopting a model law, a State was free to make minor modifications necessary for adapting it to the national legal system. In opposition to a model law, it was noted that States would be as slow to change their national laws by adopting a model law as to adhere to a convention and that in the past States had not frequently adopted model laws. Furthermore, the

adoption of a model law rather than a convention by the Commission would communicate a lesser sense of the need for unification.

16. There was some support for the adoption of general conditions. Such general conditions would give parties some guidance in drafting their contracts. Furthermore, general conditions could be used as soon as they were finalized by the Commission and would accordingly come into use earlier than if one of the other forms were adopted. In opposition to general conditions, it was noted that they would be ineffective where they conflicted with mandatory national laws and that the structure of the uniform rules as currently drafted would need considerable change if the form of general conditions were to be adopted.

17. After deliberation, the Commission noted that the uniform rules might be cast in a form which might enable the rules to be used for several purposes. For instance, a convention might be drafted which contained a set of uniform rules in an annex. This was the form used in the Hague Convention relating to a Uniform Law on the International Sale of Goods of 1 July 1964 (Hague Convention of 1964), to which was annexed the Uniform Law on the International Sale of Goods, and in the Benelux Convention relating to the Penalty Clause of 26 November 1973, to which was annexed uniform rules regulating penalty clauses. States might adhere to the convention, thereby obligating themselves to adopt the uniform rules. In addition, the convention may permit a reservation that the uniform rules were only to apply when the parties to a contract had chosen to apply the uniform rules to the contract (e.g., as in the Hague Convention of 1964, article V). Furthermore, States not adhering to the convention could use the uniform rules as a model law and parties to a contract could use the uniform rules as general conditions which they might incorporate in the contract. Accordingly, the Commission decided to examine the substance of the uniform rules and defer a decision on the form to be adopted.

Discussion of specific articles

18. The Commission discussed the definition in article A, paragraph 1, of the type of clause to be covered in the uniform rules and articles D, E, F and G. After its discussion, the Commission referred these articles to a drafting group for consideration in the light of the discussion.

Article A, paragraph 1

> "1. This law applies to contracts in which the parties have agreed [in writing] that, upon a total or partial failure of performance by a party (the obligor), another party (the obligee) is entitled to recover, or to forfeit an agreed sum of money:"

19. Opinion was divided as to maintaining the requirement that the agreement of the parties should be in writing. In support of maintaining the requirement, it was noted that writing facilitated proof of the clause and contributed to certainty as to its contents. Furthermore, certain legal systems required some types of contracts to be in writing. In opposition to the requirement, it was suggested that it should be left to the applicable law to determine if writing was to be required. Under some legal systems, the requirement of writing was a condition for the validity of the contract and since the uniform rules did not deal with the issue of validity it was unnecessary for the uniform rules to deal with this requirement. The prevailing view was that, if the form of a model law were adopted

for the uniform rules, the issue should be left to be determined by the State adopting the law. If the form of a convention were adopted, the solution adopted in articles 11 and 95 of the Vienna Convention on Contracts for the International Sale of Goods, 1980, should be adopted.

20. The Commission considered whether it was necessary to retain the word "agreed" in the phrase "agreed sum of money". It was suggested that the word was misleading, as it was not necessary for the parties to specify an exact sum in a liquidated damages or penalty clause. The prevailing view was that the word should be retained, but that consideration should be given to clarifying that a clause in which the parties only specified a method of calculating the sum payable was covered by the uniform rules.

21. There was general agreement that the uniform rules should not apply where the contract provided that the agreed sum was to be claimed by the obligee from a bank under a bank guarantee to be opened at the instance of the obligor in favour of the obligee.

22. There was agreement that the definition covered both clauses which would be characterized as liquidated damages clauses and clauses which would be characterized as penalty clauses in the common law system. However, it was noted that in its present formulation the definition might cover some clauses which should fall outside the scope of the uniform rules (e.g., a clause which provided that the price in a sales contract was to be paid in advance, and the price would be recoverable if there was no delivery of goods), and it was agreed that the definition should be reformulated to exclude such cases.

23. It was agreed that while the word "forfeit" used in the English version of the uniform rules might bear the meanings assigned in the commentary to the rules (A/CN.9/218, para. 20) the meanings of the equivalent words used in the other language versions were unclear and should be clarified. The possibility of using other terminology in the English version which would avoid this problem should be considered. It was also agreed that in the proposed reformulation of the definition of clauses to be covered by the rules an attempt might be made to avoid the use of the words "recover, or to forfeit".

Article D

"Unless the parties have agreed otherwise, the obligee is not entitled to recover or to forfeit the agreed sum if the obligor is not liable for the failure of performance."

24. It was noted that drafting improvements might be needed to clarify some issues, such as the relationship between article D and article G, problems of the burden of proof where the obligor alleges that he is not liable for failure of performance, and the extent to which the parties might modify article D. It was suggested that the burden of proof should be defined in a clearer manner and that an obligor who relies on an absence of liability should prove it. Under another view the liability of the obligor including the burden of proof should be settled under the applicable law and the present formulation was adequate in that regard.

25. The suggestion was made to delete the opening words of article D enabling the parties to modify the provisions of the article and to deal in a separate provision

with the issue of which articles parties were free to modify. The question was raised whether the parties should have the freedom to provide that the agreed sum was payable even in cases when the obligor was not liable for his failure of performance. In this connexion it was suggested that the issue might be linked to a modification of article G. The court or arbitral tribunal might be authorized to reduce the agreed sum not only in cases where it was shown to be grossly disproportionate in relation to the loss suffered by the obligee, but also where the payment of the agreed sum might be considered manifestly unfair due to absence of liability of the obligor for failure of performance.

26. It was agreed that article D should be maintained in its present form and that a necessary modification should be made in article G to take care of the situation where the requirement of the payment was considered manifestly unfair. There was also general agreement that the power of the parties to modify the provision of the article set forth in its opening words should be contained in a separate article, which would also include the power to modify articles E and F.

Article E

"1. Where the agreed sum is to be recoverable or forfeited on delay in performance of the obligation, the obligee is entitled to both performance of the obligation and the agreed sum.

2. Where the agreed sum is to be recoverable or forfeited on non-performance, or defective performance other than delay, the obligee is entitled either to performance, or to recover or forfeit the agreed sum, unless the agreed sum cannot reasonably be regarded as a substitute for performance.

3. The rules set forth above shall not prejudice any contrary agreement made by the parties."

27. It was agreed that if, under this article, the obligee was entitled to performance, a court should not be bound to enter a judgement for specific performance unless the court would do so under its own law. Subject to the recognition that the above principle was applicable, and subject to possible drafting improvements, paragraph 1 of this article was considered acceptable.

28. There was general agreement that the proviso to paragraph 2 should form a separate sentence. It was noted that in this separate sentence the proviso could be cast in a positive form ("if the agreed sum could reasonably be regarded as a substitute for performance") and that additional wording was required to clarify the consequences when the proviso was not satisfied. Clarification might also be needed as to the allocation of the burden of proof.

29. The view was expressed that paragraph 2 of this article might be clarified by providing that, upon non-performance or defective performance, the obligee is entitled to the agreed sum; however, he would not be so entitled where performance had been effected, unless the agreed sum could not reasonably be regarded as a substitute for performance. This view was opposed as the suggested formulation would deprive the obligee of an effective choice of remedies: his choice of the agreed sum could be negatived by the obligor effecting performance.

30. The view was expressed that where the obligee elected for the remedy of performance, he should also be entitled to damages caused by the non-performance or defective performance. The question was raised as to the effects of termination of the contract on the remedies given under paragraph 2. It was also noted that, in view of the power given in paragraph 3 to the parties to modify the provisions of the article, the terms of the contract drafted by the parties would to a considerable extent affect the application of the article.

Article F

"Unless the parties have agreed otherwise, if a failure of performance in respect of which the parties have agreed that a sum of money is to be recoverable or forfeited occurs, the obligee is entitled, in respect of the failure, to recover or forfeit the sum, and is entitled to damages to the extent of the loss not covered by the agreed sum, but only if he can prove that his loss grossly exceeds the agreed sum."

31. There was general agreement that the article need not repeat the description contained in article A of the type of clause covered by the uniform rules, but should only define the circumstances in which the obligee would be entitled to damages in addition to the agreed sum.

32. There was some support for the view that the obligee should only be entitled to the agreed sum, as this would enhance certainty as to the monetary rights and liabilities of the parties in case of failure of performance. There was greater support for the view that the article should be reformulated to provide that the obligee should only be entitled to the agreed sum unless the contract provided that he should be entitled to additional damages in defined circumstances. There was also some support for the view that the obligee should be entitled to additional damages only if such damages are due to the fault or gross negligence of the obligor. The prevailing view, however, was that the article as currently formulated represented an acceptable compromise.

33. There was support for the view that the present formulation should be amended to clarify that the obligee should only be entitled to damages if the applicable law gave him such a right.

Article G

"1. The agreed sum shall not be reduced by a court or arbitral tribunal.

2. However, the agreed sum may be reduced if it is shown to be grossly disproportionate in relation to the loss that has been suffered by the obligee, and if the agreed sum cannot reasonably be regarded as a genuine pre-estimate by the parties of the loss likely to be suffered by the obligee."

34. There was a view that the relationship of the rule prohibiting a reduction of the agreed sum in paragraph 1 of this article, and the rule permitting a reduction in paragraph 2, should be clarified. However, it was also noted that the present form of the article as a whole could be regarded as a compromise between the civil and common law systems.

35. While there was some support for retaining the two conditions to be satisfied under paragraph 2 before the agreed sum could be reduced, the prevailing view was that retaining the two conditions might unjustifiably restrict the power to reduce; the condition that the agreed sum could not reasonably be regarded as a genuine pre-estimate of the loss should be deleted.

36. It was noted that the present formulation of paragraph 2 appeared to give a discretion to reduce or not to reduce the agreed sum even when such sum was grossly disproportionate to the loss suffered, and it was suggested that reduction should be mandatory in such circumstances.

37. It was also noted that the rule should specify a measure delimiting the extent to which an agreed sum grossly disproportionate to the loss suffered should be reduced. Under another view, the extent of reduction should be left to the discretion of the court or arbitrator. A view was also expressed that the word "grossly" should be deleted from paragraph 2.

38. The modification of article G to enable reduction of the agreed sum when parties had, under article D, agreed that the obligee was entitled to such sum even when the obligor was not liable for his failure of performance was considered. There was support for the view that article G should be modified to enable reduction when the obligee's entitlement to the agreed sum was manifestly unfair.

39. There was general agreement that the provisions of the article could not be modified by the parties.

Decision of the Commission

40. The Drafting Group was of the view that it was unable to complete its work of preparing a revised text of the draft uniform rules in the time available. Accordingly it was decided that the Secretariat should submit a revised text for consideration by the Commission at its sixteenth session, taking into account the discussion at the present session and within the drafting group. A decision on the form to be adopted for the uniform rules could also be taken at that session.

CHAPTER III

INTERNATIONAL PAYMENTS

A. Draft Convention on International Bills of Exchange and International Promissory Notes and draft Convention on International Cheques 8/

Introduction

41. The Commission had before it the report of the Working Group on International Negotiable Instruments on the work of its eleventh session, held in New York from 3 to 14 August 1981 (A/CN.9/210). At that session, the Working Group adopted a draft Convention on International Bills of Exchange and International Promissory Notes and a draft Convention on International Cheques, after a Drafting Group had reviewed both drafts and established corresponding language versions (in Chinese, English, French, Russian and Spanish).

42. The Commission had before it the text of both draft Conventions (A/CN.9/211 and 212) and a commentary thereon (A/CN.9/213 and 214). Also before the Commission was a note by the Secretariat setting forth suggestions for possible future courses of action concerning these draft Conventions (A/CN.9/223).

Discussion at the session

43. The Commission expressed its appreciation to the Working Group and to its Chairman, Mr. René Roblot, for the successful completion of its work in the highly technical field of negotiable instruments law.

44. The Commission considered the possible future course of action concerning the two draft Conventions. While a number of suggestions were made as to which body should next review the draft texts, the Commission was agreed that it was premature to decide this question at the present session. It was felt that a final decision could be taken only after the comments by Governments on the draft Conventions had been received and an analytical compilation had been prepared by the Secretariat.

45. In view of the importance of these comments, it was deemed essential that the comments would be presented as complete as possible in the document to be prepared by the Secretariat. In order to facilitate the analytical compilation, the Secretary-General was requested to indicate in his note verbale the desirable structure and presentation of the comments. He was also asked to convey in the note verbale the expectation of the Commission that the comments would not merely contain specific observations and suggestions on individual draft articles but also provide some indication of a Government's general attitude towards the draft Conventions, including their acceptability and possible form.

46. In this connexion, it was noted that, due to delays in translation, the commentary on the draft Convention on International Bills of Exchange and International Promissory Notes (A/CN.9/213) would not be received by all Governments and interested international organizations until early in August and the commentary on the draft Convention on International Cheques probably early in September 1982. In view of this situation, it was agreed that the period for submission of comments indicated in the Secretary-General's note verbale of 14 July 1982 (i.e. until 15 February 1983) should be extended. This was deemed

necessary in order to give Governments sufficient time for eliciting the views of interested groups, in particular banking circles. It was also noted that in particular the Arabic version of the draft Conventions needed improvement as to the legal terms used therein.

47. Different views were expressed as to the time schedule for the submission of comments and for the final decision of the Commission on the future course of action. Under one view, the deadline for submission of comments should be extended until 31 March 1983 and the Commission should decide on the future course of action at its sixteenth session. In order to expedite matters, the further suggestion was made that between the Commission's sixteenth and seventeenth sessions the Working Group, possibly enlarged to include all member States of the Commission, should review the draft Conventions in the light of the comments.

48. The prevailing view, however, was to extend the period for submission of comments even further, e.g., until 30 September 1983, and to take a final decision on the future course of action at the seventeenth session of the Commission in 1984. It was felt that this time schedule provided the necessary time for Governments and organizations to ascertain the views of relevant circles and also for the Secretariat to prepare a detailed analytical compilation of the comments well in advance of the seventeenth session.

49. The Commission, after deliberation, adopted this latter view. However, it also decided to place this item on the agenda of its sixteenth session to allow for possible discussion in case pertinent information would then be available.

Decision of the Commission

50. At its 266th meeting, on 4 August 1982, the Commission adopted the following decision:

The United Nations Commission on International Trade Law

1. Expresses its appreciation to the Working Group on International Negotiable Instruments for the successful completion of its work on the preparation of a draft Convention on International Bills of Exchange and International Promissory Notes and of a draft Convention on International Cheques;

2. Requests the Secretary-General to inform all Governments and interested international organizations that they may submit their comments on these draft texts until 30 September 1983, and to provide some indication as to the desirable structure and presentation of these comments;

3. Requests the Secretary-General to prepare a detailed analytical compilation of these comments and to distribute it well in advance of the seventeenth session of the Commission to be held in 1984;

4. Decides to postpone its final decision on the future course of action to its seventeenth session;

5. Decides to place this item on the agenda of its sixteenth session to allow for possible discussion in case pertinent information would then be available.

B. Universal unit of account for international conventions 9/

Introduction

51. The Commission at its eleventh session decided to study the establishment of a universal unit of account of constant value which would serve as a point of reference in international transport and liability conventions for expressing amounts in monetary terms. 10/ At its fourteenth session, the Commission considered a report of the Secretary-General on the subject and decided to refer the matter to the Working Group on International Negotiable Instruments. 11/

52. The Working Group, at its twelfth session held at Vienna from 4 to 12 January 1982, recommended that a draft article be prepared for use in international conventions, which would designate the Special Drawing Right of the International Monetary Fund (SDR) as the unit of account for limitation of liability provisions. 12/ It also drafted a sample text for revising the limit of liability through use of a price index and a sample text for an expedited procedure for revising limits of liability in international conventions. 13/

Discussion at the session 14/

Universal unit of account

53. There was general agreement in the Commission that a preferred unit of account for international transport and liability conventions, particularly those for global application, should be the SDR and that the Commission should prepare a text for such a provision as recommended by the Working Group.

54. It was recognized that some States which were not members of the International Monetary Fund might not be able to accept the use of the SDR as a unit of account. However, it was pointed out that any universal unit of account provision prepared by the Commission would not be mandatory but would serve as the preferred model for use by a diplomatic conference preparing or revising a convention of the type in question. Particularly if the diplomatic conference were of the judgement that the limit of liability should also be expressed in "monetary units" measured in a fixed quantity of gold for those States which were not members of the International Monetary Fund, it might adopt a provision based upon the full text of article 26 of the Hamburg Rules.

55. The Commission decided that, in conformity with the recommendation of the Working Group, the universal unit of account provision would be substantially in the form of article 26, paragraph 1, of the Hamburg Rules and of paragraph 4 as modified to the extent necessary by the deletions of paragraphs 2 and 3, both of which refer to the use of a "monetary unit".

Adjustment of the limit of liability

56. The Commission was in agreement that the problems caused by the effects of changes in monetary values on the limits of liability were serious. It was noted that a limit of liability which remained fixed over a long period of time often became seriously eroded. It was also noted that in some cases when a convention containing a limit of liability provision did not come into force fairly promptly, States might later hesitate to ratify the convention because the limit of liability would have become too low through the effects of inflation.

57. There was a general discussion as to the best method for adjusting the limit of liability so as to continue to reflect the original balance of the convention. On the one hand it was suggested that the use of a proper price index would permit an automatic adjustment of the limit of liability. On the other hand it was suggested that the use of an index would itself contribute to inflation by increasing the limit of liability, and therefore the cost to the carrier or other party held liable, as a result of past price increases reflected in the index. It was pointed out that some States would not ratify any convention which contained an index provision. Furthermore, it was suggested that if an indexing provision was adopted, the adjustment of the limit of liability should occur only at intervals of sufficient duration so as to assure that the limit of liability would be stable.

58. Nevertheless, it was noted, there might be conventions for which an indexing provision would be the most appropriate and, therefore, the Commission should adopt a sample price index provision for optional use by any diplomatic conference which might wish to incorporate such a provision in a convention.

59. It was noted that the expedited revision procedure drafted by the Working Group was based in large measure on the procedure in the 1980 Convention concerning International Transport by Rail (COTIF). It was noted that this procedure assured that all States Party to a convention containing such a provision would be bound by the same limit of liability since paragraph 5 of the provision required any State which could not accept a new limit of liability adopted under the provision to denounce the convention. On the other hand it was stated that this requirement might raise problems relating to the principle of the sovereignty of States.

60. There was agreement that the Commission should adopt the indexing provision and the expedited revision procedure provision as two alternative means for adjustment of the limit of liability as recommended by the Working Group.

61. It was suggested that the attention of any diplomatic conference intending to use the sample price index provision as the means of adjusting the limit of liability be drawn to the need for determining the institution to be charged with preparing the index, revising it when appropriate, calculating the index figure at the agreed upon dates and notifying the depositary of the result.

62. However, one delegation stated that it was not prepared at the present stage to determine its position with regard to adjusting limits of liability since this problem was still being considered by competent bodies of the country concerned.

63. At its 256th meeting, on 28 July 1982, the Commission adopted the following decision:

The United Nations Commission on International Trade Law

Recognizing that many international transport and liability conventions of both a global and a regional character contain limitation of liability provisions, wherein the limitation of liability is expressed in a unit of account,

Noting that the limitation of liability as fixed in these conventions may become seriously affected over time by changes in monetary values, thereby destroying the intended balance of the convention as adopted,

Believing that a preferred unit of account for many conventions, particularly for those of global application, would be the Special Drawing Right as determined by the International Monetary Fund,

Being of the opinion that the conventions should in any event contain a provision which would facilitate the adjustment of the limit of liability to changes in monetary values,

1. Adopts the unit of account provision and the two alternative provisions for the adjustment of the limit of liability in international transport and liability conventions as contained in the annexes to the present decision;

2. Recommends that in the preparation of future international conventions containing limitation of liability provisions or in the revision of existing conventions the unit of account provision as adopted by the Commission should be used;

3. Recommends further that in such conventions one of the two alternative provisions for adjustment of the limitation of liability as adopted by the Commission should be used;

4. Suggests that, when the sample price index provision is to be used in such a convention, consideration be given to the nature of the intended price index and the institution to be charged with its preparation, revision and calculation;

5. Requests the General Assembly to recommend the use of these provisions in the preparation of future international conventions containing limitation of liability provisions or in the revision of existing conventions.

Annex I

UNIVERSAL UNIT OF ACCOUNT

1. The unit of account referred to in article [ ] of this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article [ ] are to be expressed in the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The equivalence between the national currency of a Contracting State which is not a member of the International Monetary Fund and the Special Drawing Right is to be calculated in a manner determined by that State.

2. The calculation mentioned in the last sentence of paragraph 1 is to be made in such a manner as to express in the national currency of the Contracting State as far as possible the same real value for amounts in article [ ] as is expressed there in units of account. Contracting States must communicate to the Depositary the manner of calculation at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession and whenever there is a change in the manner of such calculation.

Annex II

SAMPLE PRICE INDEX

1. The amounts set forth in article [ ] shall be linked to [a specific price index which might be considered appropriate for a particular convention]. On coming into force of this [Protocol-Convention], the amounts set forth in article [ ] shall be adjusted by an amount, rounded to the nearest whole number, corresponding in percentage to the increase or decrease in the index for the year ending on the last day of December prior to which this [Protocol-Convention] came into force over its level for the year ending on the last day of December [of the year in which the Protocol or Convention was opened for signature]. Thereafter, they shall be adjusted on the first day of July of each year by an amount, rounded to the nearest whole number, corresponding in percentage to the increase or decrease in the level in the index for the year ending on the last day of the previous December over its level for the prior year.

2. The amounts set forth in article [ ] shall not, however, be increased or decreased if the increase or decrease in the index does not exceed [ ] per cent. Where no adjustment was made in the previous year because the change was less than [ ] per cent, the comparison shall be made with the level for the last year on the basis of which an adjustment was made.

3. By the first day of April of each year the Depositary shall notify each Contracting State and each State which has signed the [Protocol-Convention] of the amounts to be in force as of the first day of July following. Changes in the amounts shall be registered with the Secretariat of the United Nations in accordance with General Assembly regulations to give effect to Article 102 of the Charter of the United Nations.

Annex III

SAMPLE AMENDMENT PROCEDURE FOR LIMIT OF LIABILITY

1. The Depositary shall convene a meeting of a Committee composed of a representative from each Contracting State to consider increasing or decreasing the amounts in article [ ]:

(a) Upon the request of at least [ ] Contracting States, or

(b) When five years have passed since the [Protocol-Convention] was opened for signature or since the Committee last met.

2. If the present [Protocol-Convention] comes into force more than five years after it was opened for signature, the Depositary shall convene a meeting of the Committee within the first year after it comes into force.

3. Amendments shall be adopted by the Committee by a [ ] majority of its members present and voting. a/

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a/ The Conference of Plenipotentiaries may wish to insert a list of criteria to be taken into account by the Committee.

4. Any amendment adopted in accordance with paragraph 3 of this article shall be notified by the Depositary to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of [6] months after it has been notified, unless within that period not less than [one-third] of the States that were Contracting States at the time of the adoption of the amendment by the Committee have communicated to the Depositary that they do not accept the amendment. An amendment deemed to have been accepted in accordance with this paragraph shall enter into force for all Contracting States [12] months after its acceptance.

5. A Contracting State which has not accepted an amendment shall nevertheless be bound by it, unless such State denounces the present Convention at least one month before the amendment has entered into force. Such denunciation shall take effect when the amendment enters into force.

6. When an amendment has been adopted by the Committee but the [6] month period for its acceptance has not yet expired, a State which becomes a Contracting State to this Convention during that period shall be bound by the amendment if it comes into force. A State which becomes a Contracting State to this Convention after that period shall be bound by any amendment which has been accepted in accordance with paragraph 4.

C. Electronic funds transfer 15/

Introduction

64. The Commission, at its eleventh session, included as an item in its programme of work the legal problems arising out of electronic funds transfers. At its twelfth session the Commission, recognizing the complex technical aspects of the subject, requested the Secretariat to continue the preparatory work on this subject within the framework of the UNCITRAL Study Group on International Payments, a consultative body composed of representatives of banking and trade institutions.

65. The Commission had before it at this session a report of the Secretary-General (A/CN.9/221) which described some of the legal problems arising in this field and contained the recommendations of the Study Group as to the future work which the Commission might undertake.

66. As examples of the legal problems arising out of the payment process, the report discussed the question as to when payment becomes final and the liability for loss caused by delayed or incorrect payment instructions. As an example of the legal problems arising out of the electronic nature of the communication and record-keeping, the report discussed the legal value of computer records.

67. The report concluded that as to the legal problems associated with the payment process, it would seem to be premature to attempt to unify the law in respect of electronic funds transfers. What seemed to be needed at this stage of development was a guide to the legal problems arising out of electronic funds transfers which would identify the legal issues, describe the various approaches, point out the advantages and disadvantages of each approach and suggest alternative solutions.

68. As to the legal value of computer records, a problem which goes beyond electronic funds transfers and concerns all aspects of international trade in which

computers might be used, the report suggested that guidelines might be developed so as to assure that records which had been created and stored in one State in a manner which made them acceptable as evidence in the courts and arbitral tribunals of that State would be acceptable as evidence in the courts and arbitral tribunals of other States in which a legal dispute might arise.

Discussion at the session

69. There was general agreement in the Commission that the preparation of a guide on the legal problems arising in electronic funds transfers should be undertaken. It was pointed out that at the present time in many States these transfers took place in a total or partial legal vacuum and that there was no agreement on the governing rules for international electronic funds transfers. It was also suggested that the problems would soon become more important for developing countries with their increased participation in domestic and international funds transfers.

70. It was suggested that the legal guide would serve largely as an inventory of legal problems to be solved in the future. Several representatives expressed the view that the guide might show areas in which the Commission could in the future prepare uniform rules. It was suggested that such uniform rules might be in the nature of a model law, which would be of particular value to the developing countries, or might concentrate on certain aspects of international electronic funds transfers.

71. As to the suggestion that guidelines be prepared on the legal value of computer records, under one view the legal rules as to evidence were so closely linked to the rest of the procedural and substantive law of a State that it would be difficult to develop even general guidelines. In this respect were mentioned the difficulties encountered in the Council of Europe on this subject, even though the regional nature of that organization reduced the disparity of approaches to be reconciled from those which would have to be reconciled by a world-wide organization such as the Commission.

72. Under another view the matter was of importance and should be undertaken by the Commission even though it might be given a lower priority than the preparation of the legal guide. It was also suggested that as a first step the subject of the legal value of computer records in the context of electronic funds transfers might be one of the subjects to be considered in the legal guide, thereby helping to prepare any future action the Commission might take on this subject.

Decision of the Commission

73. The Commission decided that the Secretariat should begin the preparation of a legal guide on electronic funds transfers, in co-operation with the UNCITRAL Study Group on International Payments. In carrying out this project the Secretariat was urged to take appropriate steps to ascertain banking practice as well as the applicable legal rules from all regions of the world, including the circulation of a questionnaire if it were deemed advisable. In this connexion it was suggested that the Study Group should be enlarged to assure adequate representation from the developing countries. The Secretariat was also requested to submit to some future session of the Commission a report on the legal value of computer records in general.

CHAPTER IV

INTERNATIONAL COMMERCIAL ARBITRATION

A. UNCITRAL Arbitration Rules: administrative guidelines 16/

Introduction

74. The Commission, at its fourteenth session, decided that it would be desirable to issue guidelines, in the form of recommendations, to arbitral institutions and other relevant bodies to assist them in adopting procedures for acting as appointing authority or for providing administrative services in cases to be conducted under the UNCITRAL Arbitration Rules. 17/ It also requested the Secretary-General to prepare a revised text of the draft guidelines which had been submitted to the Commission at its thirteenth session, and any explanations thereof, for submission to the fifteenth session of the Commission.

75. The Commission, at its present session, had before it a note by the Secretary-General, prepared pursuant to that decision. This note, contained in document A/CN.9/222, sets forth in an annex the revised draft "Recommendations concerning administrative services provided in arbitrations under the UNCITRAL Arbitration Rules".

Discussion at the session

76. The Commission, after deliberation, was agreed that the revised draft, in general, reflected the views expressed during the fourteenth session and that it was in large part acceptable, in particular the section entitled "Possible contents of administrative procedures" (paras. 14-33). As regards the preceding paragraphs, a number of suggestions and reservations were made.

77. One such proposal was, for example, to express in the title of the recommendations more clearly that they related not only to the providing of administrative services of a technical nature but also to the performing of the functions of an appointing authority under the UNCITRAL Arbitration Rules. Various other suggestions aimed at a clearer distinction between those cases where an arbitral institution adopted the UNCITRAL Arbitration Rules as its own institutional rules and those cases where an institution acted as appointing authority or provided administrative services in an ad hoc arbitration under the UNCTIRAL Arbitral Rules.

78. Under one view, only this latter situation should be dealt with in the recommendations. Under another view, however, the first situation should also be covered to the extent that an institution did not merely use the UNCITRAL Arbitration Rules as a model in preparing its own institutional rules with no indication of their source, a practice which did not raise the kind of problems which had led to the preparation of the recommendations, but instead announced that it had adopted the UNCITRAL Arbitration Rules as its own institutional rules. In support of this view it was pointed out that also in these cases the recommendations could serve the purpose of inviting institutions to consider the various options available for using the UNCITRAL Arbitration Rules and to meet the parties' needs for certainty as to what procedures to expect.

79. As regards this latter aspect, different views were expressed as to whether the recommendations should call upon institutions, when adopting the UNCITRAL Arbitration Rules, not to modify these Rules. Under one view, any arbitral institution should be free to modify the Rules according to its particular needs. Under another view, no such modifications should be made, in order to avoid disparity in the application of the UNCITRAL Arbitration Rules by different institutions. The prevailing view, however, was that the approach taken in the draft recommendations (paras. 8-10) constituted an acceptable compromise.

80. As regards the nature of the recommendations, the Commission was agreed that they were in no way regulatory or binding but merely intended to provide informaton and assistance to arbitral institutions and other interested bodies. The Commission was also agreed that the recommendations should not be accorded a formal status like other texts elaborated by it such as the UNCITRAL Arbitration Rules themselves. The view was expressed that, instead, the Secretariat could be requested to transmit the recommendations in the name of the Secretary-General, under his general mandate to assist in the interpretation and application of the UNCITRAL Arbitration Rules and to promote their use.

81. Different views were expressed as to which channels of communication should be used for the distribution of the recommendations. Under one view, copies of the recommendations should be transmitted only to Governments, inviting them to forward the recommendations to all interested and relevant bodies in their respective countries. Under another view, the recommendations should be transmitted directly to all arbitral institutions and similar interested bodies known to the Secretariat. There was wide support, however, for using both of these channels of communication.

82. The Commission concluded that it was desirable to finalize the text of the recommendations during the course of its present session. It, therefore, requested the Secretariat to redraft the recommendations taking into account the suggestions made during the discussion and to submit the revised draft for its consideration before the closure of the present session.

83. The Commission considered a revised draft text of the recommendations contained in document A/CN.9/222. It was agreed that this revised draft text reflected the views expressed during the discussion of those recommendations.

84. The Commission was agreed that the revised text was acceptable, subject to the following amendment. After paragraph 17 of the annex of A/CN.9/222 which set forth a model clause, the following paragraph should be added:

> "In view of the considerations and concerns expressed above in paragraphs 12 and 15, if the administrative procedures of the institution are such as to lead to a modification in substance of the UNCITRAL Arbitration Rules, it may be advisable that this modification be reflected in the model clause."

85. The Commission requested the Secretary-General to transmit these recommendations to Governments and to arbitral institutions and other interested bodies such as chambers of commerce. 18/

B. Model arbitration law 19/

86. The Commission, at its fourteenth session, decided to proceed with work towards the preparation of a draft model law on international commercial arbitration, and to entrust this work to the Working Group on International Contract Practices. 20/

87. The Working Group commenced this work at its third session, held in New York from 16 to 26 February 1982. The Commission, at its present session, had before it the report of the Working Group on the work of that session (A/CN.9/216).

88. The Commission took note of the report of the Working Group on the work of its third session and expressed its appreciation to the Chairman of the Working Group, Mr. Iván Szasz. It noted that the Working Group had discussed all but three questions set forth in a Working Paper prepared by the Secretariat (A/CN.9/WG.II/WP.35). It was understood that the list of issues dealt with in that Working Paper, to which the Working Group had added some more issues to be possibly included in the model law, was not to be regarded as exhaustive but that the Working Group should be open to any further suggestions for inclusion of yet other issues. It was suggested in particular that the Working Group should consider such issues as the relevance of limitation of actions in the context of arbitration proceedings and the time period during which arbitral awards would be enforceable.

89. The Commission requested the Working Group to proceed with its work expeditiously.

CHAPTER V

NEW INTERNATIONAL ECONOMIC ORDER 21/

A. Clauses related to contracts for the supply and construction of large industrial works

Introduction

90. The Commission had before it the report of the Working Group on the New International Economic Order on the work of its third session, held in New York from 12 to 23 July 1982 (A/CN.9/217). The report sets forth the deliberations of the Working Group on the basis of the studies by the Secretary-General entitled "Clauses related to contracts for the supply and construction of large industrial works" (A/CN.9/WG.V/WP.4 and Add.1-8, hereinafter referred to as Study I and A/CN.9/WG.V/WP.7 and Add.1-6, hereinafter referred to as Study II).

91. The report noted that the Working Group had concluded the discussion of those topics in Study I which had not been considered at the second session of the Working Group, and had also completed its discussion of Study II.

92. There was general agreement in the Working Group that the Secretariat should now commence the drafting of the legal guide on contractual provisions relating to contracts for the supply and construction of large industrial works which the Commission, at its fourteenth session, had decided to undertake. 22/ The Working Group requested the Secretariat to submit a few sample draft chapters and an outline of the structure of the guide to its next session.

Discussion at the session

93. The Commission expressed its appreciation to the Working Group and to its Chairman, Mr. Leif Sevón, for the expeditious manner in which the work had been conducted and for the conclusion of the consideration of the two studies prepared by the Secretariat. The report of the Working Group was approved by the Commission.

94. It was suggested that the legal guide should deal with the legal problems between the parties to the contract arising out of the failure of a Government to grant an import or export licence, the withdrawal of such a licence or out of other governmental restrictions which caused one of the parties not to be able to perform the contract as agreed. It was noted, however, that certain aspects of this issue were already covered in the Studies.

95. A view was expressed that it would be advisable to clarify in the legal guide the importance of the choice of the applicable law by the parties and to include therein a model clause in this connexion.

96. A suggestion was made that the legal guide should recommend that, in case of the use of cost-reimbursable contracts, at least a preliminary estimate of the cost of the works should be indicated in the contract.

97. There was general support that the next session of the Working Group should be held at Vienna during the week immediately preceding the next session of the Commission, as suggested by the Working Group.

B. General Assembly resolution 36/107 on international economic law

98. The Commission took note of General Assembly resolution 36/107 of 10 December 1981 on progressive development of the principles and norms of international law relating to the new international economic order. It also took note of information given by the Secretariat on its co-operation with the United Nations Institute for Training and Research (UNITAR) which had been entrusted with a study relating to this issue.

99. A view was expressed that this study was connected with some aspects of international trade law and that the Commission should be informed regularly in the future of the progress of the study. It was further suggested that the experience of the Commission in dealing with the new international economic order might be of relevance to the study.

100. The Commission heard a statement by the observer for UNITAR, who pointed out that all relevant information on the work of the Commission needed for the study had been received from the Secretariat of the Commission and that there was a close co-operation between the Secretariats of UNITAR and the Commission.

CHAPTER VI

CO-ORDINATION OF WORK

A. Activities of other organizations in the field of international trade law: transport documents 23/

Introduction

101. The General Assembly, in resolution 34/142, requested the Secretary-General to place before the Commission at each of its sessions a report on the activities of other organs and international organizations related to international trade law together with recommendations as to steps to be taken by the Commission.

102. The Commission, at its fourteenth session, decided that, to further strengthen the co-ordinating role of the Commission, the Secretariat should select a particular area of international trade law for consideration and submit a report on the work of other organizations in that area. 24/ The subject of international transport documents was chosen for the report submitted to the present session of the Commission (A/CN.9/225).

103. The report discussed the legal régime governing transport documentation requirements under the principal multilateral conventions and some of the current developments in this field. The report concluded that there may be a greater need in the future than there has been in the past for harmonization of the rules governing such transport documentation.

Discussion at the session

104. There was general agreement that the report was a useful means for the Commission to fulfil its role of co-ordination in the field of international trade law. Although the report did not suggest any specific action which the Commission might take at the present time, it demonstrated the need for co-ordination in this field. The suggestion contained in the report that the Secretariat would continue to monitor developments in this field was welcomed and the Secretariat was requested to keep the Commission informed of any future course of action which it might take.

105. The observer from the International Institute for the Unification of Private Law (UNIDROIT) stated that his organization was interested in co-operating with the Commission in the future work leading to the preparation of a draft Convention on the Liability of International Terminal Operators, one of the texts analysed in the report.

106. The Secretariat was also requested to prepare further reports of this nature and several topics for future reports were suggested, among which were transfer of technology and legal aspects of the new international economic order. There was general agreement, however, that the Secretariat should be free to choose the subject on which to report in the light of the developments in the field and the resources available to the Secretariat.

107. The Commission also repeated its desire, expressed at the fourteenth session, that a report be submitted at regular intervals on all the activities of other

organizations active in the field of international trade law. It was stated that some Governments circulated the report throughout the different ministries as a means of informing those ministries of the activities being undertaken and as a means of co-ordinating the approach of the Government in the different fora. It was suggested that such a report might be submitted once every two or three years.

B. Documentary credits 25/

Introduction

108. The Commission had before it a note by the Secretariat which described the progress made by the International Chamber of Commerce (ICC) in the revision of the 1974 version of the Uniform Customs and Practice for Documentary Credits (UCP) (A/CN.9/229). The Commission was informed that a draft revised text of UCP was ready for circulation by ICC to its national committees and that, at the request of ICC, the draft text would be circulated later this month by the Secretariat to all States for comment. It was expected that the final version of the revised text would be ready for adoption by ICC during the course of this year. It was suggested that the Commission might wish to consider at its sixteenth session the possibility of commending the use of the revised text of UCP, as it had in respect of the 1962 and 1974 versions of UCP.

Discussion at the session

109. A proposal was made that the Secretariat should be requested to make a study of the use of letters of credit, especially for purposes other than the sale of goods, to see whether the current law was adequate. It was pointed out that letters of credit were originally intended to be used in connexion with the documentary sale of goods. Currently they are used for a number of other purposes, such as in connexion with bid bonds and re-purchase agreements. It was suggested that the legal rules developed for the one situation might not be appropriate for these other uses to which letters of credit are currently put.

110. It was pointed out that such a study should not prejudice any future endorsement by the Commission at its sixteenth session of the new revision of UCP. That revision by ICC had been undertaken largely to reflect recent changes in transport technology and banking practice as they affected the traditional function of the documentary credit in the international sale of goods. This revision of UCP was desirable in any case. Furthermore, it could be expected that the study would be a long-term project and could not be before the Commission at the time the new revision of UCP was presented for endorsement.

111. The observer from ICC stated that his organization looked forward to co-operating in the preparation of the study.

Decision of the Commission

112. After discussion the Commission decided to request the Secretary-General to submit to a future session of the Commission a study on letters of credit and their operation in order to identify legal problems arising from their use, especially in connexion with contracts other than those for the sale of goods.

C. General co-ordination of activities 26/

113. The Commission had before it a note by the Secretary-General which discussed the co-ordination activities of the Secretariat during the last year (A/CN.9/226).

114. The representative of the Hague Conference on Private International Law reported that invitations had been sent to all members of the Commission, whether or not they were members of the Conference, to attend the meeting of the Special Commission to consider the preparatory work for the revision of the 1955 Hague Convention on the Law Applicable to International Sale of Goods.

115. The representative of the International Institute for the Unification of Private Law (UNIDROIT) reported that all members of the Commission had been invited to a meeting of governmental experts in Rome from 2 to 13 November 1981 to revise the draft Uniform Law on Agency of an International Character in the International Sale of Goods. The draft law had been revised to make it conform better to the United Nations Convention on Contracts for the International Sale of Goods. It was also reported that the Government of Switzerland had agreed to be the host to a diplomatic conference in Geneva from 31 January to 18 February 1983 to adopt a convention on the subject.

116. The Commission noted that, at its fourteenth session, it had welcomed the decision of the Hague Conference and UNIDROIT to invite members of the Commission to participate in the preparatory work on these conventions and that it regarded them as significant steps towards close collaboration in the work of the unification of the law related to international trade. 27/ The Commission also noted that the General Assembly, in resolution 36/32 of 13 November 1981, had also welcomed these decisions.

117. The representative of the Council of Europe indicated the interest of his organization in co-operating with the Commission in activities of mutual interest, and in particular in respect of the legal value of computer records, a subject on which the Council of Europe adopted a Recommendation to Governments.

118. The Commission expressed its approval of the co-ordination activities of the Secretariat. It also welcomed the statements of those representatives of other organizations which had spoken. The Secretariat was urged to continue its efforts in this regard, and especially with those organizations mentioned in General Assembly resolution 34/142 on the co-ordinating role of the Commission.

CHAPTER VII

STATUS OF CONVENTIONS 28/

119. The Commission considered the status of conventions that were the outcome of its work, i.e. Convention on the Limitation Period in the International Sale of Goods (New York, 1974); Protocol amending the Convention on the Limitation Period in the International Sale of Goods (Vienna, 1980); United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg); and United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). The Commission had before it a note by the Secretary-General entitled "Status of conventions" (A/CN.9/227) which sets forth the status of signatures, ratifications and accessions to these Conventions as at 15 May 1982.

120. The Commission noted that, pursuant to paragraph 8 of General Assembly resolution 36/32 of 13 November 1981, the Secretary-General had brought these Conventions to the notice of all States which had not ratified or acceded to them, provided these States with appropriate information as to the mode of their entry into force and the current status of ratifications and accessions, and had drawn the attention of these States to the view of the Commission that an early entry into force and a wide acceptance of these Conventions would be of great value for the unification of international trade law.

121. The Commission noted with appreciation that, subsequent to 15 May 1982, Chile had ratified the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg), and that ratification by France of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) had been authorized by its Parliament.

122. As regards the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), many States indicated that the question of adhering to this Convention was under active consideration and some of these States indicated that a decision favourable to adherence was expected. Several States indicated that the procedures for adherence were taking place.

123. As regards the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg), many States indicated that the question of adhering to this Convention was under active consideration. Several States indicated their intention of adhering to the Convention. The Secretary of the Commission noted that, in connexion with this Convention, the United Nations Conference on Trade and Development was also taking steps to promote adherence to it.

124. The Secretary of the Commission informed the Commission that the Secretariat intended to hold regional seminars on the three Conventions noted above in connexion with the Commission's programme of training and assistance, in order to enhance wider adherence to these Conventions.

CHAPTER VIII

TRAINING AND ASSISTANCE IN THE FIELD OF INTERNATIONAL TRADE LAW 29/

Introduction

125. The Commission, at its fourteenth session, 30/ agreed that it should continue to sponsor symposia and seminars on international trade law and considered it desirable for these seminars to be organized on a regional basis. The Commission welcomed the possibility that these regional seminars might be sponsored jointly with regional organizations. It requested the Secretariat to make such arrangements as it found desirable in this regard.

126. By its resolution 36/32 of 13 November 1981, the General Assembly reaffirmed the importance, in particular for the developing countries, of the work of the Commission concerned with training and assistance in the field of international trade law and welcomed the initiatives being undertaken to sponsor regional seminars jointly with regional organizations. The resolution also invited Governments, relevent United Nations organs, organizations, institutions and individuals to assist the Secretariat in financing and organizing symposia and seminars.

127. The Commission had before it a note by the Secretariat entitled "Training and assistance" (A/CN.9/228). This note reported that the Inter-American Juridical Committee of the Organization of American States had included in its 1982 annual seminar the subject of international sale of goods and that the Secretary-General of the Asian-African Legal Consultative Committee had agreed to organize, jointly with the UNCITRAL Secretariat, seminars on trade law subjects in conjunction with its annual sessions whenever feasible. The note also reported on activities of the Secretariat to promote training and assistance in the field of international trade law.

Discussion at the session

128. The Commission was informed that a contribution had been received from the Government of Yugoslavia in the amount of $US 3,000 to be used towards the financing of the Commission's training and assistance programme. In addition, the Government of the Netherlands had made available the sum of 25,000 guilders to be used toward the financing of seminars or symposia which the Commission might organize in the future. The Commission expressed its gratitude for these contributions.

129. The Commission was informed that the Government of Australia conducted a seminar each year in the field of international trade law, including the work of the Commission. It was considering holding a future seminar in this field which would relate specifically to the countries of the Pacific region. The Commission was also informed that an institute for the unification of trade law had been established at the University of Seville and that the work of this institution would be closely related to the work of the Commission. It was reported that the Ministry of Commerce of Iraq was organizing a symposium which would deal with the United Nations Convention on Contracts for the International Sale of Goods for officials in Iraq dealing with international trade. In addition, the Commission

was informed that the work of UNCITRAL was the subject of analysis and discussion at the University of Baghdad.

130. The Secretary of the Commission expressed appreciation to Governments and institutions which were arranging seminars or symposia in the field of international trade law and requested that the Secretariat be supplied with copies of papers or proceedings in connexion with these seminars or symposia in order to assist the Secretariat in its further planning of regional seminars.

131. The view was expressed that initiatives such as those about which the Commission had been informed were of particular benefit to developing countries and it was hoped that such initiatives would continue.

Decision of the Commission

132. The Commission agreed that the Secretariat should continue to explore various possibilities of collaborating with other organizations and institutions in the organization of regional seminars and also to use those occasions for the promotion of legal texts emanating from the work of the Commission.

CHAPTER IX

MOST-FAVOURED-NATION CLAUSES 31/

Introduction

133. In resolution 36/111 of 10 December 1981 the General Assembly requested, inter alia, the Commission to submit any written comments and observations which it deemed appropriate on chapter II of the report of the International Law Commission on the work of its thirtieth session, 32/ and in particular on the draft articles on most-favoured-nation clauses adopted by the International Law Commission and those provisions relating to such clauses on which the International Law Commission was unable to take a decision.

134. The Commission had before it a note by the Secretariat entitled "Most-favoured-nation clauses" (A/CN.9/224). This note briefly set forth the background of resolution 36/111 and of the draft articles on most-favoured-nation clauses. In order to assist the Commission in its consideration of procedures for responding to the request of the General Assembly, the note discussed the purpose of the draft articles on most-favoured-nation clauses, and drew attention to certain points in connexion with three issues relating to the draft articles. The note concluded by suggesting a possible procedure for formulating the Commission's response to the request of the General Assembly.

Discussion at the session

135. The Commission was divided as to whether it should proceed to formulate comments and observations upon the International Law Commission draft articles on most-favoured-nation clauses.

136. In support of the view that the Commission should formulate comments and observations in response to the request of the General Assembly, it was suggested that as a subsidiary organ of the General Assembly UNCITRAL was the most appropriate legal body to consider the International Law Commission draft articles. According to this view the draft articles were closely linked to international trade and the comments of the Commission on the draft articles could help remove obstacles to international trade and could assist in the development of international trade. A number of members of the Commission who spoke on this issue supported this view.

137. In support of the view that the Commission should not formulate comments and observations, it was suggested that the draft articles were outside the field of trade law, but rather dealt with questions of treaty law and trade policy, thus making them an inappropriate subject of consideration by the Commission. Concern was also expressed that the topic of most-favoured-nation clauses involved controversial political issues with which the Commission was not equipped to deal. It was suggested that the task of reconciling the divergent views concerning these issues should be left to other fora. It was further suggested that the draft articles had been considered by the Sixth Committee and the General Assembly and had already been commented on by some States, United Nations organs and international organizations. A majority of the members of the Commission who spoke on this issue supported this view.

138. The Commission noted that in the absence of a consensus no substantive comments on the draft articles could be submitted.

CHAPTER X

RELEVANT GENERAL ASSEMBLY RESOLUTIONS, FUTURE WORK AND OTHER BUSINESS 33/

A. Relevant General Assembly resolutions

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

139. The Commission took note with appreciation of General Assembly resolution 36/32 of 13 November 1981 on the report of the United Nations Commission on International Trade Law on the work of its fourteenth session.

(ii) General Assembly resolution on international economic law

140. The Commission considered General Assembly resolution 36/107 of 10 December 1981 in connexion with item 7 of the agenda. 34/

(iii) General Assembly resolution on most-favoured-nation clauses

141. The Commission considered General Assembly resolution 36/111 of 10 December 1981 in connexion with item 11 of the agenda. 35/

B. Book on UNCITRAL

(i) Affirmation of decision

142. The Commission, at its fourteenth session, in connexion with its discussion of co-ordination of work, decided to authorize the Secretariat to publish a book on UNCITRAL. 36/ However, this decision was inadvertently not reflected in the report of the Commission at its fourteenth session.

143. The Commission decided to affirm the decision taken at its fourteenth session by including the following paragraph in the report of its present session:

> "In view of the desirability of promoting further the work of the Commission and the legal texts associated with this work, the Commission decided to authorize the Secretariat to publish a book describing the activities of the Commission for the harmonization of unification of international trade law, together with legal texts emanating from the work of the Commission."

(ii) News-letter

144. The suggestion was made that an UNCITRAL news-letter might be prepared and distributed either quarterly or semi-annually. Such a news-letter might include such matters as information on ratifications or adherences to the conventions emanating from the work of the Commission, the actions of its working groups, activities of other organizations and summaries of judicial decisions relevant to the work of the Commission.

145. There was general agreement that such a news-letter would be useful. It was stated that it would be of particular value to the developing countries which often had a difficult time keeping abreast of developments. In this connexion the

statements previously made in respect of the co-ordination of work were recalled. 37/ In addition, it would serve as a means of promoting the work of the Commission, including the ratification or adherence to the conventions which it had prepared.

146. It was decided to request the Secretary-General to prepare a note for the next session which would consider the format which such a news-letter might take, as well as the administrative and financial implications.

C. Date and place of the sixteenth session of the Commission

147. It was decided that the sixteenth session of the Commission would be held from 24 May to 3 June 1983 at Vienna.

D. Sessions of the working groups

148. It was decided that the Working Group on International Contract Practices would hold its fourth session from 4 to 15 October 1982 at Vienna and its fifth session from 22 February to 4 March 1983 at New York.

149. It was decided that the fourth session of the Working Group on the New International Economic Order would be held from 16 to 20 May 1983 at Vienna.

Notes

1/ Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 17 were elected by the General Assembly at its thirty-first session on 15 December 1976 (decision 31/310) and 19 were elected by the General Assembly at its thirty-fourth session on 9 November 1979 (decision 34/308). Pursuant to resolution 31/99 of 15 December 1976 the term of those members elected by the General Assembly at its thirty-first session will expire on the last day prior to the opening of the sixteenth regular annual session of the Commission in 1983 while the term of those members elected by the General 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.

2/ The elections took place at the 252nd meeting, on 26 July 1982, and the 257th meeting, on 28 July 1982. In accordance with a decison taken by the Commission at its first session, the Commission has three Vice-Chairmen, so that together with the Chairmen and Rapporteur, each of the five groups of States listed in General Assembly resolution 2205 (XXI), sect. II, para. 1, will be represented on the bureau of the Commission (see Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), para. 14 (Yearbook of the United Nations Commission on International Trade Law, Vol. I: 1968-1970 (United Nations publication, Sales No. E.71.V.1), part two, I, A, para. 14)).

3/ It was agreed that General Assembly resolution 36/107 would be discussed in conjunction with agenda item 7.

4/ The Commission considered this subject at its 256th, 257th, 258th, 259th, 260th and 263rd meetings, on 28, 29 and 30 July and 2 August 1982.

5/ Report of the United Nations Commission on International Trade Law on the work of its twelfth session, Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17), para. 31 (Yearbook of the United Nations Commission on International Trade Law, Volume X: 1979 (United Nations publication, Sales No. E.81.V.2), Part One, II, A, para. 31).

6/ 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. 44.

7/ For the summary records of the discussion, see A/CN.9/SR.256, 257, 258, 259 and 260.

8/ The Commission considered this subject at its 265th and 266th meetings, on 3 and 4 August 1982.

9/ The Commission considered this subject at its 254th, 255th and 256th meetings, on 27 and 28 July 1982.

10/ Report of the United Nations Commission on International Trade Law on the work of its eleventh session, Official Records of the General Assembly, Thirty-third Session, Supplement No. 17 (A/33/17), para. 67.

11/ Ibid., Thirty-sixth Session, Supplement No. 17 (A/36/17), para. 32.

12/ A/CN.9/215, para. 97.

13/ Ibid., paras. 54 and 90.

14/ For the summary records of the discussion, see A/CN.9/SR.254, 255 and 256.

15/ The Commission considered this subject at its 256th meeting, on 27 July 1982.

16/ The Commission considered this subject at its 253rd, 254th and 266th meetings, on 26, 27 July and 4 August 1982.

17/ 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. 59.

18/ The complete text of the recommendations is reproduced in annex I to this report.

19/ The Commission considered this subject at its 253rd meeting, on 26 July 1982.

20/ 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.

21/ The Commission considered this subject at its 267th meeting, on 4 August 1982.

22/ 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. 84.

23/ The Commission considered this subject at its 263rd and 264th meetings, on 2 and 3 August 1982.

24/ 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. 100.

25/ The Commission considered this subject at its 263rd meeting, on 2 August 1982.

26/ The Commission considered this subject at its 263rd and 264th meetings, on 2 and 3 August 1982.

27/ 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. 94.

28/ The Commission considered this subject at its 264th meeting, on 3 August 1982.

29/ The Commission considered this subject at its 267th meeting, on 4 August 1982.

30/ 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. 109.

31/ The Commission considered this subject at its 262nd meeting, on 2 August 1982.

32/ Official Records of the General Assembly, Thirty-third Session, Supplement No. 10, A/33/10 and Corr.1 (Arabic only). (Yearbook of the International Law Commission 1978, vol. II, Part Two).

33/ The Commission considered this subject at its 267th meeting, on 4 August 1982.

34/ See paras. 98-100.

35/ See chap. IX.

36/ 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), paras. 85-101.

37/ See para. 107.

ANNEX I

Recommendations to assist arbitral institutions and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules

Introduction

1. The UNCITRAL Arbitration Rules were adopted by the United Nations Commission on International Trade Law in 1976, after extensive consultations with arbitral institutions and arbitration experts. In the same year, the General Assembly of the United Nations, by its resolution 31/98, recommended the use of these Rules in the settlement of disputes arising in the context of international commercial relations. This recommendation was based on the conviction that the establishment of rules for ad hoc arbitration that were acceptable in countries with different legal, social and economic systems would significantly contribute to the development of harmonious international economic relations.

2. Since then, the UNCITRAL Arbitration Rules have become well known and are widely used around the world, not only in ad hoc arbitrations. Contracting parties increasingly refer to these Rules in their arbitration clauses or agreements, and a substantial number of arbitral institutions have, in a variety of ways, accepted or adopted these Rules.

3. One way in which the UNCITRAL Arbitration Rules have been accepted is that arbitral bodies have drawn on them in preparing their own institutional arbitration rules. This has taken two different forms. One has been to use the UNCITRAL Arbitration Rules as a drafting model, either in full (e.g., the 1978 Rules of Procedure of the Inter-American Commercial Arbitration Commission) or in part (e.g., the 1980 Procedures for Arbitration and Additional Rules of the International Energy Agency Dispute Settlement Centre).

4. The other form has been to adopt the UNCITRAL Arbitration Rules as such, maintaining their name, and to include in the statutes or administrative rules of an institution a provision that disputes referred to the institution shall be settled in accordance with the UNCITRAL Arbitration Rules, subject to any modifications set forth in those statutes or administrative rules. Prime examples of institutions adopting this approach are the two arbitration centres established under the auspices of the Asian-African Legal Consultative Committee (see Rule I of the Rules for Arbitration of the Kuala Lumpur Regional Arbitration Centre; arts. 4 and 11 of the Statutes of the Cairo Centre for International Commercial Arbitration). In addition, a provision similar to the one described above was included in the "Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the settlement of claims by the Government of the United States of America and the Government of the Islamic Republic of Iran" of 19 January 1981 (art. III, para. 2).

5. In addition to the above cases, which concern an arbitral body's own and only rules, a great number of institutions which have their own established arbitration rules have accepted, in a variety of ways, the use of the UNCITRAL Arbitration Rules if parties so wished. Some institutions have, for example, embodied that option into their established institutional rules (e.g. London Court of Arbitration, 1981 International Arbitration Rules; Foreign Trade Arbitration of the

Economic Chamber of Yugoslavia, 1981 Rules). Another form of acceptance has been to offer the administrative facilities of an arbitral institution in co-operation agreements between arbitration associations or chambers of commerce and in recommendations or model clauses providing for the use of the UNCITRAL Arbitration Rules. The prime example, which was also the first international agreement to include the UNCITRAL Arbitration Rules, is the "Optional Arbitration Clause for use in contracts in U.S.A.-U.S.S.R. Trade-1977 (prepared by American Arbitration Association and U.S.S.R. Chamber of Commerce and Industry)", with the Stockholm Chamber of Commerce acting as appointing authority.

6. Of the many other institutions that have declared their willingness to act as appointing authority and to provide administrative services in arbitration cases under the UNCITRAL Arbitration Rules only one should be mentioned here. The American Arbitration Association (AAA) has adopted a specific set of administrative "Procedures for Cases under the UNCITRAL Arbitration Rules" setting forth in detail how the AAA would perform the functions of an appointing authority and provide administrative services in conformity with the UNCITRAL Arbitration Rules.

7. In view of the promising trend in favour of the use of the UNCITRAL Arbitration Rules, these recommendations are intended to provide information and assistance to arbitral institutions and other relevant bodies, such as chambers of commerce. As the above examples indicate, there are a number of ways in which the UNCITRAL Arbitration Rules and their use in arbitration proceedings may be accepted.

A. Adoption of UNCITRAL Arbitration Rules as institutional rules of an arbitral body

8. Arbitral institutions, when preparing or revising their institutional rules, may wish to consider the advisability of adopting the UNCITRAL Arbitration Rules. While it would clearly be in the interest of the desired unification of the rules on arbitral procedure that arbitral institutions adopt these Rules in full, some institutions may have reasons for incorporating, at least for the time being, only some of the provisions of these Rules. Even such adoption in part would constitute a step towards the harmonization of the rules on arbitral procedure.

9. However, if an institution intends to adopt such provisions and to maintain the name UNCITRAL Arbitration Rules, special considerations come into play which relate to the interest and expectations of the parties to an arbitration agreement or to a contract including an arbitration clause. Parties, and their lawyers, who have gained familiarity with and confidence in the use of the UNCITRAL Arbitration Rules tend to rely on the uniform and full application of these Rules by any arbitral institution which in its rules provides for the application of the UNCITRAL Arbitration Rules.

10. Therefore, an arbitral institution which intends to refer in its institutional rules to the UNCITRAL Arbitration Rules should take into account this interest of the parties in having certainty about which procedures to expect. Accordingly, it is recommended that institutions, when adopting the UNCITRAL Arbitration Rules and maintaining their name, refrain from modifying them.

11. This appeal to leave the UNCITRAL Arbitration Rules unchanged does not mean, of course, that the particular organizational structure and needs of a given institution should be neglected. Such specific features normally relate to matters not regulated in the UNCITRAL Arbitration Rules. For example, there are no special

provisions in these Rules concerning the various facilities and procedures relating to administrative services or on such particular matters as fee schedules. It should, therefore, be possible to adopt institutional rules consisting of the UNCITRAL Arbitration Rules and some administrative rules which are tailored to the particular organizational structure and needs of the institution and are in conformity with the UNCITRAL Arbitration Rules.

12. If, in exceptional circumstances, an institution deems it necessary, for administrative purposes, to adopt a rule which modifies the UNCITRAL Arbitration Rules, it is strongly recommended to clearly indicate that modification. An appropriate way of doing so is to specify the provision of the UNCITRAL Arbitration Rules involved, as done, for example, in the Rules for Arbitration of the Kuala Lumpur Regional Arbitration Centre (opening words of Rule 8: "In lieu of the provisions of article 41 of the UNCITRAL Arbitration Rules the following provisions shall apply: ..."). This indication would be of great help to the reader and potential user who would otherwise have to embark on a comparative analysis of the administrative procedures and all provisions of the UNCITRAL Arbitration Rules in order to discover any disparity between them.

B. Arbitral institution or other body acting as appointing authority or providing administrative services in ad hoc arbitration under the UNCITRAL Arbitration Rules

1. Offer of services

13. Ad hoc arbitrations conducted under the UNCITRAL Arbitration Rules may be facilitated by a body acting as appointing authority or providing administrative services of a secretarial, technical nature. These kinds of assistance could be rendered not only by arbitral institutions but also by other bodies, in particular chambers of commerce or trade associations.

14. Such institutions and bodies are invited to consider offering their services in this regard. If they decide to do so, they may wish to make that willingness known to the interested public. It is advisable that they describe in detail the services offered and the relevant administrative procedures. a/

15. In devising these administrative procedures or rules, the institutions should have due regard to the interests of the parties. Since the parties in these cases have agreed that the arbitration is to be conducted under the UNCITRAL Arbitration Rules, their expectations should not be frustrated by an administrative rule which is in conflict with the UNCITRAL Arbitration Rules. Thus, the considerations and the appeal expressed above in the context of adopting these Rules as institutional rules (see paras. 9-12) apply here with even greater force.

16. The following remarks and suggestions are intended to assist any interested institution in taking the necessary organizational measures and in devising appropriate administrative procedures in conformity with the UNCITRAL Arbitration Rules.

17. It is recommended that the administrative procedures of the institution distinguish clearly between the functions of an appointing authority as envisaged under the UNCITRAL Arbitration Rules and other administrative assistance of a technical, secretarial nature. The institution should declare whether it is offering both or only one of these types of service. When offering both types the

institution may declare its willingness to provide only one of these services in a given case, if so requested.

18. The distinction between these two types of services is also of relevance to the question of which party may request these services. On the one hand, an institution may act as appointing authority under the UNCITRAL Arbitration Rules only if it has been so designated by the parties, whether in the arbitral clause or in a separate agreement. An institution should so state in its administrative procedures, possibly with the additional provision (as a rule of interpretation) that it would also act as appointing authority if the parties submit a dispute to it under the UNCITRAL Arbitration Rules without specifically designating it as the appointing authority. On the other hand, administrative services of a technical, secretarial nature might be requested not only by the parties, but also by the arbitral tribunal (cf. art. 15, para. (1) and art. 38, para. (c) of the UNCITRAL Arbitration Rules).

19. In order to assist parties, the institution may wish to set forth in its administrative procedures model arbitration clauses covering the above services. The first part of any such model clause should be identical with the model clause of the UNCITRAL Arbitration Rules:

> "Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force."

The agreement as to the services which are requested should follow. For example:

> "The appointing authority shall be the XYZ-Institution."

or:

> "The XYX-Institution shall act as appointing authority and provide administrative services in accordance with its administrative procedures for cases under the UNCITRAL Arbitration Rules."

As suggested in the UNCITRAL Model Arbitration Clause, the following note may be added:

> Note-Parties may wish to consider adding:
>
> (a) The number of arbitrators shall be ... (one or three);
>
> (b) The place of arbitration shall be ... (town or country);
>
> (c) The language(s) to be used in the arbitral proceedings shall be ...".

20. In view of the considerations and concerns expressed above in paragraphs 12 and 15, if the administrative procedures of the institution are such as to lead to a modification in substance of the UNCITRAL Arbitration Rules, it may be advisable that this modification be reflected in the model clause.

2. Functions as appointing authority

21. An institution which is willing to act as appointing authority under the UNCITRAL Arbitration Rules should specify in its administrative procedures the various functions of an appointing authority envisaged by these Rules which it will perform. It might also describe the manner in which it intends to perform these functions.

(a) Appointment of arbitrators

22. The UNCITRAL Arbitration Rules envisage various possibilities concerning the appointment of an arbitrator by an appointing authority. Under article 6, paragraph 2, the appointing authority may be requested to appoint a sole arbitrator, in accordance with certain procedures and criteria set forth in article 6, paragraphs 3 and 4. Further, it may be requested, under article 7, paragraph 2, to appoint the second of three arbitrators. Finally, it may be called upon to appoint a substitute arbitrator under articles 11, 12 or 13 (successful challenge and other reasons for replacement).

23. For each of these cases, the institution may indicate details as to how it would select the arbitrator in accordance with the UNCITRAL Arbitration Rules. In particular, it may state whether it maintains a panel or list of arbitrators, from which it would select appropriate candidates, and may provide information on the composition of such panel. It may also specify which person or organ within the institution would in fact make the appointment (e.g. president, director, secretary or a committee).

(b) Decision on challenge of arbitrator

24. Under article 10 of the UNCITRAL Arbitration Rules, any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his impartiality or independence. When such a challenge is contested (e.g. if the other party does not agree to the challenge or the challenged arbitrator does not withdraw), the decision on the challenge is to be made by the appointing authority according to article 12, paragraph 1. If the appointing authority sustains the challenge, it may also be called upon to appoint the substitute arbitrator.

25. The institution may indicate details as to how it would make the decision on such a challenge in accordance with the UNCITRAL Arbitration Rules. In particular, it may state which person or organ within the institution would make the decision. The institution may also wish to identify any code of ethics or other written principles which it would apply in ascertaining the independence and impartiality of arbitrators.

(c) Replacement of arbitrator

26. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his performing his functions, the appointing authority may, under article 13, paragraph 2, be called upon to decide on whether such a reason for replacement exists, and it may be involved in appointing a substitute arbitrator. What has been said above in regard to the challenge of an arbitrator applies also to such cases of replacement of an arbitrator.

27. The situation is different with regard to those cases of replacement covered by paragraph 1 of article 13. In the event of the death or resignation of an

arbitrator during the course of the arbitral proceedings, the only task which may be entrusted to an appointing authority is to appoint a substitute arbitrator.

(d) Assistance in fixing fees of arbitrators

28. Under the UNCITRAL Arbitration Rules, the arbitral tribunal fixes its fees, which shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case. In this task, the arbitral tribunal may be assisted by an appointing authority in three different ways:

(i) If the appointing authority has issued a schedule of fees for arbitrators in international cases which it administers, the arbitral tribunal in fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case (art. 39, para. 2);

(ii) In the absence of such a schedule of fees, the appointing authority may provide, upon a party's request, a statement setting forth the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators (art. 39, para. 3);

(iii) In cases referred to under (i) and (ii), when a party so requests and the appointing authority consents, the arbitral tribunal shall fix its fees only after consultation with the appointing authority, which may make any comment it deems appropriate to the arbitral tribunal concerning the fees (art. 39, para. 4).

29. An institution willing to act as appointing authority may indicate, in its administrative procedures, any relevant details in respect of these three possible ways of assistance in fixing fees. In particular, it may state whether it has issued a schedule of fees as envisaged under (i). The institution might also declare its willingness to perform the function envisaged under (ii), if it has not issued a fee schedule, and to perform the function under (iii).

(e) Advisory comments regarding deposits

30. Under article 41, paragraph 3, of the UNCITRAL Arbitration Rules, the arbitral tribunal shall fix the amounts of any initial or supplementary deposits only after consultation with the appointing authority, which may make any pertinent comment it deems appropriate, if a party so requests and the appointing authority consents to perform this function. The institution may wish to indicate in its administrative procedures its general willingness to do so.

31. It should be noted that, under the UNCITRAL Arbitration Rules, this kind of advice is the only task relating to deposits which an appointing authority may be requested to fulfil. Thus, if an institution offers to perform any other function (e.g. to hold deposits, to render an accounting thereof), it should be pointed out that this is a modification of article 41 of the UNCITRAL Arbitration Rules.

3. Administrative services

32. An institution which is prepared to provide administrative services of a technical, secretarial nature may describe in its administrative procedures the

various services offered. Such services may be rendered upon request of the parties or the arbitral tribunal.

33. In describing the various services, the institution should specify those services which would not be covered by its general administrative fee and which, therefore, would be billed separately (e.g. interpretation services). The institution may also wish to indicate which of the services it can provide itself, with its own facilities, and which it might merely arrange to be rendered by others.

34. The following list of possible administrative services, which is not intended to be exhaustive, may assist institutions in considering and publicizing which services it may offer:

(a) Forwarding of written communications of a party or the arbitrators;

(b) Assisting the arbitral tribunal in establishing the date, time and place of hearings, and giving advance notice to the parties (cf. art. 25, para 1 of UNCITRAL Arbitration Rules);

(c) Providing, or arranging for, meeting rooms for hearings or deliberations of the arbitral tribunal;

(d) Arranging for stenographic transcripts of hearings;

(e) Assisting in filing or registering arbitral awards in those countries where such filing or registration is required by law;

(f) Providing secretarial or clerical assistance in other respects.

4. Administrative fee schedule

35. The institution may wish to state the fees which it charges for its services. It might reproduce its administrative fee schedule or, in the absence thereof, indicate the basis for calculating its administrative fees.

36. In view of the two possible categories of services an institution may offer, it is recommended that the fee for each category be stated separately. Thus, if an institution offers both categories of service, it may indicate its fees for the following three functions:

(a) Acting as appointing authority and providing administrative services;

(b) Acting as appointing authority only;

(c) Providing administrative services without acting as appointing authority.

(In addition to the information and suggestions set forth herein, assistance may be obtained from the secretariat of the Commission (International Trade Law Branch, Office of Legal Affairs, United Nations, Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria). The secretariat could, for example, provide any interested institution with copies of the institutional rules or administrative procedures of a given other institution. It may also, if so requested, assist in the drafting of an administrative provision or make suggestions in this regard.)

Notes

a/ In an introductory part, the institution may wish to provide, in addition to the customary description of its aims and traditional activities, some information regarding the UNCITRAL Arbitration Rules. In particular, it may state that these Rules were adopted in 1976, after extensive deliberations, by the United Nations Commission on International Trade Law, that this Commission consists of 36 member States representing the different legal, economic and social systems and geographic regions of the world; that in the preparation of these Rules, various interested international organizations and leading arbitration experts were consulted; that the General Assembly of the United Nations has recommended the use of these Rules for inclusion in international commercial contracts; and that these Rules have become widely known and been accepted around the world.

ANNEX II

List of documents of the session

A. General series

A/CN.9/209	Provisional agenda
A/CN.9/210	Report of the Working Group on International Negotiable Instruments on the work of its eleventh session (New York, 3-14 August 1981)
A/CN.9/211	Draft Convention on international bills of exchange and international promissory notes
A/CN.9/212 and Corr.1 (Spanish only)	Draft Convention on international cheques
A/CN.9/213	Commentary on draft Convention on international bills of exchange and international promissory notes
A/CN.9/214	Commentary on draft Convention on international cheques
A/CN.9/215	Report of the Working Group on International Negotiable Instruments on the work of its twelfth session (Vienna, 4-15 January 1982)
A/CN.9/216	Report of the Working Group on International Contract Practices on the work of its third session (New York, 16-26 February 1982)
A/CN.9/217	Report of the Working Group on the New International Economic Order on the work of its third session (New York, 12-23 July 1982)
A/CN.9/218	Text of draft uniform rules on liquidated damages and penalty clauses, together with a commentary thereon
A/CN.9/219	Draft uniform rules on liquidated damages and penalty clauses - Analysis of the responses of Governments and international organizations
A/CN.9/219/Add.1	Ibid., Addendum
A/CN.9/220	Universal unit of account for international conventions
A/CN.9/221 and Corr.1 (French only)	Electronic funds transfer
A/CN.9/222	International commercial arbitration: Recommendations concerning administrative services provided in arbitrations under the UNCITRAL Arbitration Rules

A/CN.9/223	International payments: possible courses of action concerning the draft Convention on international bills of exchange and international promissory notes and the draft Convention on international cheques
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B. Restricted series

[A/CN.9/XV]CRP.1	Draft report of the United Nations Commission on International Trade Law on the work of its fifteenth session: international commercial arbitration, chapter IV
[A/CN.9/XV]CRP.1/Add.1	Draft report, international payments, chapter III
[A/CN.9/XV]CRP.1/Add.2	Draft report, international payments, chapter III (cont'd)
[A/CN.9/XV]CRP.1/Add.3	Draft report, uniform rules on liquidated damages and penalty clauses, chapter II
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[A/CN.9/XV]CRP.1/Add.9	Draft report, international commercial arbitration, chapter IV (cont'd)
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[A/CN.9/XV]CRP.1/Add.11	Draft report, training and assistance in the field of international trade law, chapter VIII
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[A/CN.9/XV]CRP.3	International commercial arbitration: Revised draft text of recommendations relating to the use of the UNCITRAL Arbitration Rules

C. Information series

A/CN.9/XV/INF.1	Provisional list of participants
A/CN.9/XV/INF.2	List of participants