II. THE SECOND SESSION (1969)

A. Report of the Commission*

CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. ORGANIZATION OF THE SESSION</td>
<td></td>
</tr>
<tr>
<td>A. Opening and duration</td>
<td>1–2</td>
</tr>
<tr>
<td>B. Membership and attendance</td>
<td>3–5</td>
</tr>
<tr>
<td>C. Election of officers</td>
<td>6</td>
</tr>
<tr>
<td>D. Agenda</td>
<td>7</td>
</tr>
<tr>
<td>E. Establishment of two committees of the whole</td>
<td>8–12</td>
</tr>
<tr>
<td>F. General debate</td>
<td>13</td>
</tr>
<tr>
<td>G. Decisions of the Commission</td>
<td>14–15</td>
</tr>
<tr>
<td>II. INTERNATIONAL SALE OF GOODS</td>
<td></td>
</tr>
<tr>
<td>A. The Hague Conventions</td>
<td>16–39</td>
</tr>
<tr>
<td>(1) General observations</td>
<td>16–17</td>
</tr>
<tr>
<td>(2) Hague Conventions of 1964</td>
<td>18–31</td>
</tr>
<tr>
<td>(3) Yague Convention of 1955</td>
<td>32–36</td>
</tr>
<tr>
<td>(4) Decision of the Commission</td>
<td>37–38</td>
</tr>
<tr>
<td>(5) Observations</td>
<td>39</td>
</tr>
<tr>
<td>B. Time-limits and limitations (prescription) in the field of the international sale of goods</td>
<td>40–47</td>
</tr>
<tr>
<td>C. General conditions of sale and standard contracts, Incoterms and other trade terms</td>
<td>48–60</td>
</tr>
<tr>
<td>D. Co-ordination of the activities of organizations in the field of the international sale of goods</td>
<td>61–62</td>
</tr>
<tr>
<td>III. INTERNATIONAL PAYMENTS</td>
<td></td>
</tr>
<tr>
<td>A. Negotiable instruments</td>
<td>63–89</td>
</tr>
<tr>
<td>B. Bankers’ commercial credits</td>
<td>90–95</td>
</tr>
<tr>
<td>C. Guarantees and securities</td>
<td>96–99</td>
</tr>
<tr>
<td>D. Co-ordination of the work of organizations in the field of international payments</td>
<td>100</td>
</tr>
<tr>
<td>IV. INTERNATIONAL COMMERCIAL ARBITRATION</td>
<td></td>
</tr>
<tr>
<td>V. INTERNATIONAL LEGISLATION ON SHIPPING</td>
<td>101–113</td>
</tr>
<tr>
<td>VI. A. Register of organizations and register of texts</td>
<td>114–133</td>
</tr>
<tr>
<td>B. Bibliography</td>
<td>134–141</td>
</tr>
<tr>
<td>VII. CO-ORDINATION OF THE WORK OF ORGANIZATIONS IN THE FIELD OF INTERNATIONAL TRADE LAW; WORKING RELATIONSHIP AND COLLABORATION WITH OTHER BODIES</td>
<td>142</td>
</tr>
<tr>
<td>VIII. TRAINING AND ASSISTANCE IN THE FIELD OF INTERNATIONAL TRADE LAW</td>
<td>143–155</td>
</tr>
<tr>
<td>IX. YEARBOOK OF THE COMMISSION</td>
<td>156–160</td>
</tr>
<tr>
<td>X. SUGGESTIONS RELATING TO FUTURE ACTIVITIES OF THE COMMISSION</td>
<td>161–167</td>
</tr>
<tr>
<td>XI. ORGANIZATIONAL QUESTIONS RELATING TO FUTURE WORK</td>
<td>168–177</td>
</tr>
<tr>
<td>A. Planning for future work</td>
<td>178–182</td>
</tr>
<tr>
<td>B. Establishment of working groups</td>
<td>183–184</td>
</tr>
<tr>
<td>C. Summary records of subsidiary bodies</td>
<td>185–187</td>
</tr>
<tr>
<td>D. Date of the third session</td>
<td>188</td>
</tr>
</tbody>
</table>

XII. RESOLUTIONS AND OTHER DECISIONS ADOPTED BY THE COMMISSION AT ITS SECOND SESSION

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>117</td>
</tr>
</tbody>
</table>

INTRODUCTION

The present report of the United Nations Commission on International Trade Law is submitted to the General Assembly in accordance with paragraph 10 of section II of General Assembly resolution 2205 (XXI) of 17 December 1966. As provided in the same paragraph, this report is submitted simultaneously to the United Nations Conference on Trade and Development (UNCTAD) for comments.

The Commission adopted the present report at its 49th meeting on 31 March 1969. The report covers the second session of the Commission, which was held at the United Nations Office in Geneva from 3 to 31 March 1969.

CHAPTER I
ORGANIZATION OF THE SESSION

A. Opening and duration

1. The United Nations Commission on International Trade Law (UNCITRAL), established by General Assembly resolution 2205 (XXI) of 17 December 1966, held its second session at the United Nations Office in Geneva from 3 to 31 March 1969. The session was opened, on behalf of the Secretary-General, by Mr. Blaine Sloan, Director of the General Legal Division, Office of Legal Affairs.

2. The Commission held twenty-four plenary meetings in the course of the session.

B. Membership and attendance

3. Under the terms of paragraph 1 of section II of General Assembly resolution 2205 (XXI) the Commission consists of twenty-nine States, elected by the General Assembly. The present members of the Commission, elected by the General Assembly at its twenty-second session on 30 October 1967, are the following States:¹

<table>
<thead>
<tr>
<th>Argentina</th>
<th>Mexico*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Nigeria*</td>
</tr>
<tr>
<td>Belgium</td>
<td>Norway*</td>
</tr>
<tr>
<td>Brazil</td>
<td>Romania</td>
</tr>
<tr>
<td>Chile*</td>
<td>Spain</td>
</tr>
<tr>
<td>Columbia*</td>
<td>Syria</td>
</tr>
<tr>
<td>Congo (Democratic Republic of)</td>
<td>Thailand*</td>
</tr>
<tr>
<td>Czechoslovakia*</td>
<td>Tunisia</td>
</tr>
<tr>
<td>France*</td>
<td>Union of Soviet Socialist Republics*</td>
</tr>
<tr>
<td>Ghana*</td>
<td>United Arab Republic*</td>
</tr>
<tr>
<td>Hungary</td>
<td>United Kingdom of Great Britain and Northern Ireland*</td>
</tr>
<tr>
<td>India</td>
<td>United Republic of Tanzania*</td>
</tr>
<tr>
<td>Iran</td>
<td>Kenya</td>
</tr>
<tr>
<td>Italy*</td>
<td>United States of America</td>
</tr>
</tbody>
</table>

4. With the exception of Colombia, Congo (Democratic Republic of), Nigeria and Thailand, all members were represented at the second session of the Commission.

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

(a) United Nations organs:

Economic Commission for Europe (ECE); United Nations Conference on Trade and Development (UNCTAD); United Nations Institute for Training and Research (UNITAR).

(b) Specialized agencies:

Food and Agriculture Organization of the United Nations (FAO); Inter-Governmental Maritime Consultative Organization (IMCO); International Monetary Fund (IMF).

(c) Intergovernmental organizations:

Commission of the European Communities; Council for Mutual Economic Assistance (CMEA); Council of Europe; Council of the European Communities; Hague Conference on Private International Law; Inter-American Juridical Committee; International Institute for the Unification of Private Law (UNIDROIT); Organization

¹ The term of office of all members began, in accordance with General Assembly resolution 2205 (XXI), on 1 January 1968. The fourteen members marked with an asterisk were selected by the President of the General Assembly to serve for a term of three years ending on 31 December 1970. The other fifteen members will serve for the full term of six years ending on 31 December 1973.
of American States (OAS); United International Bureaux for the Protection of Intellectual Property (BIRPI).

d) International non-governmental organizations

International Bar Association; International Chamber of Commerce (ICC); International Chamber of Shipping (ICS); International Law Association (ILA); World Peace through Law Center.

C. Election of officers

6. At its 26th meeting on 3 March 1969, the Commission elected the following officers by acclamation:

Chairman: Mr. László Récezi (Hungary);
Vice-Chairman: Mr. Gervasio Ramón Carlos Colombres (Argentina);
Vice-Chairman: Mr. Nagendra Singh (India);
Vice-Chairman: Mr. Mohsen Chafik (United Arab Republic);
Rapporteur: Mr. Stein Rognlien (Norway).

D. Agenda

7. The agenda of the session as adopted by the Commission at its 26th meeting, on 3 March 1969, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. International sale of goods:
   (a) The Hague Conventions of 1964;
   (b) The Hague Convention on Applicable Law or 1955;
   (c) Time-limits and limitations (prescriptions) in the field of international sale of goods;
   (d) General conditions of sale and standard contracts;
   (e) Incoterms and other trade terms.
5. International payments:
   (a) Negotiable instruments;
   (b) Bankers’ commercial credits;
   (c) Guarantees and securities.
6. International commercial arbitration:
   (a) Steps that might be taken with a view to promoting the harmonization and unification of law in this field;
7. Consideration of inclusion of international shipping legislation among the priority topics in the work programme.
8. (a) Register of organizations and register of texts;
   (b) Bibliography.
9. Consideration of ways and means of promoting co-ordination of the work of organizations active in the progressive harmonization and unification of international trade law and of encouraging co-operation among them.

2 In accordance with a decision taken by the Commission at the second meeting of its first session, the Commission shall have three Vice-Chairmen, in order to secure representation of each of the five groups of States listed in paragraph 1 of section II of General Assembly resolution 2205 (XXI) on the bureau of the Commission.

10. Working relationship and collaboration with other bodies.
11. Consideration of opportunities for training and assistance in the field of international trade law.
12. Consideration of the possibility of issuing a Yearbook.
13. Programme of work until the end of 1972.
14. Date of third session.
15. Adoption of the report of the Commission.

E. Establishment of two committees of the whole

8. The Commission, at its 27th meeting on 4 March 1969, decided to establish two committees of the whole (Committee I and Committee II) which would meet simultaneously to consider the agenda items to be referred to them.

9. The Commission, at its 28th meeting, on 4 March 1969, decided to refer to Committees I and II for consideration the following items:

Committee I

Item 4. International sale of goods:
   (a) The Hague Conventions of 1964;
   (b) The Hague Convention on Applicable Law or 1955;
   (c) Time-limits and limitations (prescriptions) in the field of international sale of goods;
   (d) General conditions of sale and standard contracts;
   (e) Incoterms and other trade terms.

Item 6. International commercial arbitration:
   (a) Steps that might be taken with a view to promoting the harmonization and unification of law in this field;

Committee II

Item 5. International payments:
   (a) Negotiable instruments;
   (b) Bankers’ commercial credits;
   (c) Guarantees and securities.

Item 8 (a) Register or organizations and register of texts;
   (b) Bibliography.

Item 9. Consideration of ways and means of promoting co-ordination of the work of organizations active in the progressive harmonization and unification of international trade law and of encouraging co-operation among them.

The Commission also requested Committees I and II to consider the question of co-ordination in respect of subjects referred to them. At its 34th meeting, on 17 March 1969, the Commission further referred to Committee II the question concerning the publication of a Yearbook of the Commission (item 12 of the agenda).

10. Committee I met from 6 to 24 March 1969 and held fifteen meetings. Committee II met from 6 to 20 March 1969 and held twelve meetings.

11. At its 11th meeting on 6 March 1969, Committee I elected unanimously Mr. Nagendra Singh (India) as Chairman and Mr. Shinchiro Michida (Japan) and Mr. Ion Nestor (Romania) as Rapporteurs for item 4 and item 6 respectively. The Committee at its 11th meeting, following the departure from Geneva of Mr. Nagen-
dra Singh, elected Mr. Gervasio Ramón Carlos Colombia (Argentina) as Chairman. At its 1st meeting, on 6 March 1969, Committee II elected unanimously Mr. Nehemias Gueiros (Brazil) as Chairman and Mr. Kevin William Ryan (Australia) as Rapporteur.

12. The Commission considered the report of Committee II at its 36th and 39th meetings, on 21 March 1969, and the report of Committee I at its 43rd, 44th and 45th meetings, on 25 and 26 March 1969. The Commission decided to include the substance of the Committee’s reports in its report on the work of its second session.

F. General debate

13. The Commission decided to have a general debate on the substantive items on its agenda before the committees of the whole began their work. A summary of the observations made by representatives during the general debate on a particular item is included in the chapter relating to that item.

G. Decisions of the Commission

14. At the 26th meeting of the Commission, on 3 March 1969, the Chairman recalled that the Commission, at its first session, had agreed that its decisions should, as far as possible, be reached by consensus, and that it was only in the absence of consensus that decisions should be taken by a vote as provided for in the rules of procedure relating to the procedure of Committees of the General Assembly.

15. The decisions taken by the Commission in the course of its second session were all reached by consensus. The decisions taken in respect of each substantive item are, for easy reference, set out in the final chapter of this report.

CHAPTER II

INTERNATIONAL SALE OF GOODS

A. The Hague Conventions

(1) General observations

16. It was recalled that, as a matter of principle, the Commission had a clear mandate and was therefore entirely competent to take such steps as would, in its view, further the harmonization and unification of international trade law. In this connexion, many representatives pointed out that the decision of the Commission to consider the Hague Conventions of 1964 and 1955 in no way implied that the Commission should unnecessarily confine itself to merely giving an opinion whether their contents were or were not satisfactory.

17. A number of representatives expressed the wish that the Commission would not create any obstacles to the ratification of the Hague Conventions. Other representatives were of the opinion that the Commission, although it wished to take full account of the work already accomplished in the field, was at liberty to chart a new course if, upon examination, the Hague Conventions proved to be unacceptable to a substantial number of States. The view was also expressed that the Hague Conventions of 1964 and 1955 should be replaced by a single instrument comprising both substantive and conflict rules of international sale. One representative stated that the unification of the law of the international sale of goods could only be effected by such a new international instrument.

(2) Hague Conventions of 1964


19. The Commission considered the general aspects of the Hague Conventions of 1964 during a general debate held in the course of its 28th to 31st meetings, on 4, 5 and 6 March 1969. A summary of the observations made in the course of that debate is set out in paragraphs 21-30 below.

20. The text of the Hague Conventions of 1964 and of the uniform laws forming the annex to those Conventions were considered by Committee I in the course of its 1st to 6th and 10th meetings, held on 6, 7, 10 and 14 March 1969 (see A/CN.9/L.15, paragraphs 5-8). A summary of the comments made by members of the Commission and observers of organizations during those meetings is set out in annex I to the present report. Committee I also considered what course of action should be recommended to the Commission in respect of the Hague Conventions of 1964 and, in general, for the purpose of promoting the progressive harmonization and unification of the law relating to the international sale of goods.

21. In the course of the discussion two main trends of opinion emerged regarding the Hague Conventions of 1964.

22. In the view of some representatives, the Conventions were suitable and practicable instruments and a significant contribution towards the unification of law. Therefore, they should not be revised before they had been put to the test in actual practice and before it was reasonably certain that a better instrument could be drawn up; in this connexion, ratification of the Conventions, even if accompanied by the reservation in article V of the Convention providing a uniform law on the international sale of goods, would be desirable. Moreover, before revising the Conventions, one should first be more or less certain that it would be possible to draft a better instrument. The view was also expressed by some representatives that any action by the Commission, other than recommending to States that they accede, might
slow down the present trend towards ratification or accession. The observer of the International Institute for the Unification of Private Law (UNIDROIT) expressed the opinion that, in general, the objections to provisions of the Conventions had already been considered at the 1964 Diplomatic Conference and rejected.

23. In the view of other representatives, the Hague Conventions of 1964 did not correspond to present needs and realities and, in the interest of unification, it would be desirable to review the Conventions at an early date. Representatives sharing this viewpoint pointed out that the 1964 Hague Conference, at which the Conventions were adopted, had been attended by only twenty-eight States and that none of the developing countries had been represented.

24. Several representatives held the view that the Hague Conventions of 1964 had not taken into account the interests of developing countries. Other representatives also considered that it was essential that the legal systems and the interests of countries not represented at the Hague Conference of 1964 should from now on be taken into account.

25. Some representatives expressed the view that the Conventions embodied certain legal concepts of an artificial character which it would be difficult for some States to accept. Moreover, many provisions were aimed at facilitating trade between countries within the same region rather than between countries of different continents. Therefore, it would hardly serve a useful purpose for the Commission to recommend to States that they accede to the Convention.

26. The observer of UNIDROIT stated that, in his view, the legal position with regard to a revision of the Hague Conventions of 1964 was that such a revision could be undertaken only by the States which had drawn up these Conventions, and that while States which had not signed the Conventions could conclude a separate agreement they had no power to amend the Conventions. In his opinion, UNIDROIT could take action only if the Conventions themselves authorized it to do so.

27. The observer of the Hague Conference on Private International Law stressed the contradictions between the system laid down in article 2 of the uniform law on the international sale of goods of 1964 and the Hague Convention of 1955. He expressed the view that any future solution in the field of the international sale of goods had to establish a co-ordination of substantive rules and rules of conflicts. In fact, the latter could not be dispensed with as long as there were States which had not accepted the new uniform law.

28. Mr. H. Scheffer, who was Secretary-General of the 1964 Hague Diplomatic Conference on the Unification of Law governing the International Sale of Goods, in a statement on behalf of the Netherlands Government, made at the invitation of Committee I, stated that the Netherlands Government, being responsible for the 1964 Conference and bound by certain obligations laid down in the final clauses of the Hague Conventions of 1964, would always be ready to lend its further assistance in this field if requested by the United Nations or other organizations.

29. Some representatives referred to paragraph 2 of Recommendation II annexed to the Final Act of the Hague Diplomatic Conference on the Unification of Law Governing the International Sale of Goods, in which the Conference recommended that UNIDROIT should establish a committee composed of representatives of the Governments of the interested States which should consider what further action should be taken to promote the unification of law on the international sale of goods. One representative also drew attention to article XIV of the Hague Convention of 1964 relating to a uniform law on the international sale of goods which provided that after the Convention had been in force for three years, any Contracting State might request the convening of a conference for the purpose of revision; that States invited to the Conference, other than Contracting States, should have the status of observers unless the Contracting States decided otherwise by a majority vote and that observers should have all rights of participation except voting rights.

30. Other representatives took the view that a new convention acceptable to all States, or at least to a majority of them, should be drawn up and opened for accession by all States which participated in international trade. The Commission should set up a body to prepare a draft of a new world-wide convention which would take account of the interests of all countries, and the United Nations should subsequently convene an international conference for the purpose of adopting such a convention.

31. In proposing that the unification of the law of the international sale of goods could only be achieved by a new convention, one representative suggested that the new convention should use, as preparatory documents, the decisions of the United Nations and its organs dealing with the normalization of trade relations and designed to eliminate colonialism and manifestations of neo-colonialism, from international economic relations, the principles governing international trade relations and trade policies adopted in 1964 by UNCTAD, the general conditions of sale and model contracts prepared by the United Nations Economic Commission for Europe, the general conditions of delivery of the Council for Mutual Economic Assistance (1968), the text of the Hague Conventions of 1964 and 1955, and the acceptable rules of municipal law governing relations in respect of contracts of international sales.

(3) Hague Convention of 1955

32. The Commission considered the Hague Convention of 1955 on the Law Applicable to the International Sale of Goods (hereinafter referred to as the Hague Convention of 1955) in the light of a note by the Secretary-General containing the replies by States concerning that Convention, and the comments made by the Secretary-General of the Hague Conference on Private International Law (A/CN.9/12 and Add.1, 2 and 3). The Commission had also before it a proposal submitted by the delegation of the USSR concerning the unification of rules of law regulating the international sale of goods (A/CN.9/L.9).

33. The Commission considered the general aspects
of the Hague Convention of 1955 and what future action it should take in respect of that Convention during a general debate held in the course of its 28th to 31st meetings, on 4, 5 and 6 March 1969. A summary of the observations made on the Convention in the course of that debate is set out in paragraphs 35 and 36 below.

34. The provisions of the Hague Convention of 1955 were considered by Committee I in the course of its 7th and 10th meetings, held on 11 and 14 March 1969 (see A/CN.9/L.15, paragraph 9). A summary of the comments made by members of the Commission and observers of organizations during these meetings is set out in annex II to the present report.

35. A number of representatives stressed the importance of the Hague Convention of 1955 and were of the opinion that, at least at the present stage of development of the law of the international sale of goods, conflict rules were necessary, and that for this reason the Convention served a useful purpose. Some representatives who were in favour of the preparation of a new convention that would replace the Hague Conventions of 1964, expressed the view that conflict rules should form an integral part of a new Convention on the international sale of goods. The view was also expressed that the Convention had been drawn up by a limited number of States and that it should be examined in order to ascertain whether its provisions unduly favoured the exporting countries.

36. The Observer of the Hague Conference on Private International Law stated that the Conference would welcome the views of members of the Commission which were not States members of the Conference and that if the Commission were of the opinion that the Hague Convention of 1955 should be revised, the Conference would be willing to consider that possibility.

(4) Decision of the Commission

37. At the 10th meeting of Committee I, on 14 March 1969, the representative of Hungary submitted a draft resolution on behalf of Brazil, Ghana, Hungary, India and the United States of America (A/CN.9/L.10). At the same meeting, the representative of Kenya requested that Kenya be included among the sponsors of the draft resolution. After certain amendments had been made, the draft resolution was approved by Committee I for submission to the Commission.

38. The Commission, at its 43rd and 44th meetings on 25 and 26 March 1969, considered the draft resolution submitted by Committee I. At its 44th meeting the Commission unanimously adopted the following draft resolution:

"The United Nations Commission on International Trade Law,

"Recalling General Assembly resolution 2421 (XXIII) expressing the conviction that the harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, would significantly contribute to economic co-operation between countries and, thereby, to their well being,

"Convinced that the Hague Conventions of 1955 and 1964, as a result of many years of study and research under the auspices of the Hague Conference on Private International Law and UNIDROIT, respectively, constitute an important contribution to the harmonization and unification of the law of the international sale of goods,

"Having considered the written replies from Governments to the question addressed to them by the Secretary-General, whether they intend to ratify, or accede to, the Hague Conventions of 1955 and 1964 and the reasons for their position, as well as the oral and written comments regarding the provisions of the Conventions made by members of the Commission at its second session,

"Having further considered the studies submitted by Governments on the Hague Conventions of 1964,

"Bearing in mind that seven countries have ratified the Hague Convention of 1955 and three countries the Hague Conventions of 1964,

"Noting the statements made by a number of Governments regarding their intention to adhere to the Conventions, and not wishing to delay or prevent ratification of these Conventions by the countries who may desire to do so,

"Considering, at the same time, the views expressed by a number of Governments that the Conventions in their present text, are not suitable for worldwide acceptance,

"Being of the opinion that in the establishment of generally acceptable uniform rules governing the international sale of goods the work already done in the field should as far as possible be taken into account and that duplication of efforts should be avoided through collaboration, where appropriate, with the organizations operating in this field,

"Decides:

"1. To request the Secretary-General to complete the analysis of the replies received from States regarding the Hague Conventions of 1964 (A/CN.9/17) in the light of the replies and studies received since its preparation and of the written and oral comments by members of the Commission during its second session, and to submit the analysis to the Working Group established under paragraph 3;

"2. To request the Secretary-General to prepare an analysis of the replies received from States regarding the Hague Convention of 1955 as well as of the written and oral comments by members of the Commission during its second session, and to submit the analysis to the Working Group to be set up under paragraph 3;

"3. To establish a Working Group — composed of the following fourteen members of the Commission: Brazil, France, Ghana, Hungary, India, Iran, Japan, Kenya, Mexico, Norway, Tunisia, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America — which shall:

"(a) Consider the comments and suggestions by States as analysed in the documents to be prepared
by the Secretary-General under paragraphs 1 and 2 above, in order to ascertain which modifications of the existing texts might render them capable of wider acceptance by countries of different legal, social and economic systems, or whether it will be necessary to elaborate a new text for the same purpose, or what other steps might be taken to further the harmonization or unification of the law of the international sale of goods;

"(b) Consider ways and means by which a more widely acceptable text might best be prepared and promoted, taking also into consideration the possibility of ascertaining whether States would be prepared to participate in a Conference;

"(c) Submit a progress report to the third session of the Commission;

"4. To recommend that the members of the Working Group should be represented by persons especially qualified in the law of the international sale of goods;

"5. To request the Secretary-General to invite members of the Commission not represented on the Working Group, UNIDROIT, the Hague Conference on Private International Law and other international organizations concerned, to attend the meetings of the Working Group and to recommend that they should be represented by persons especially qualified in the law of the international sale of goods.

(5) Observations

39. One representative recalled his previous statement that the unification of the law of the international sale of goods could only be effected by a new international instrument comprising both substantive and conflict rules.

B: Time-limits and limitations (prescription) in the field of the international sale of goods

40. The subject of the harmonization and unification of the law on time-limits and limitations (prescription) in the field of the international sale of goods was considered by the Commission at its 29th to 31st meetings on 5 and 6 March 1969 during the general debate and by Committee I in the course of four meetings on 17 to 19 and 24 March 1969. A summary of the observations made by members of the Commission during those meetings is set out in paragraphs 43 and 44 below.

41. The Commission had before it a note by the Secretary-General (A/CN.9/16 and Add.1 and 2) reproducing the studies on time-limits and limitations in connexion with the international sale of goods submitted by the Governments of Belgium, Czechoslovakia, Norway and the United Kingdom. In addition, the Secretariat of the Council of Europe had made available to the Commission a document of the European Committee on Legal Co-operation of that organization, entitled "Replies made by Governments of Member States to the Questionnaire on 'time-limits'."

42. The Commission expressed warm appreciation of the studies which had been submitted by the Governments of Belgium, Czechoslovakia, Norway and the United Kingdom. These had been of considerable help in assisting the Commission in its work.

43. The view was expressed that the harmonization of rules prescribing time-limits for asserting claims in connexion with international sale transactions presented a complex problem and that the Commission should consider whether that problem could be solved by the harmonization of conflict rules or the adoption of uniform substantive rules. It was noted in this connexion that, generally, in civil law countries the rules relating to time-limits and limitations were part of substantive law, whereas in common law countries they were considered to be part of procedural law.

44. There was a general consensus that this topic was one which could profitably be the subject of immediate work by the Commission. The studies revealed numerous disparities between the rules of law of domestic legal systems and a fundamental difference of approach in the civil law and common law systems. A number of representatives referred to the work already done in this field in the draft elaborated in 1961 and the general conditions adopted in 1968 by the Council for Mutual Economic Assistance; in the draft rules elaborated within the framework of the European Committee on Legal Co-operation of the Council of Europe; and by Professor H. Trammer in his preliminary draft of a convention, annexed to the study submitted by the Government of Czechoslovakia.

Decision of the Commission

45. At the 12th meeting of Committee I, on 18 March 1969, the representatives of Hungary and the United Kingdom submitted a recommendation on time-limits and limitations (prescription) in the international sale of goods which the Committee had asked them to prepare. After certain amendments had been made, the proposal was approved by Committee I at its 15th meeting, on 24 March 1969, for submission to the Commission.

46. At its 44th meeting, on 26 March 1969, the Commission considered the recommendation of Committee I and unanimously adopted the following decision:

"1. The Commission decides to set up a Working Group consisting of seven members: Argentina, Belgium, Czechoslovakia, Japan, Norway, United Arab Republic and United Kingdom of Great Britain and Northern Ireland. The Working Group should be composed of persons specially qualified in the field of law referred to the Working Group for consideration.

"2. The Working Group shall:

"(a) Study the topic of time-limits and limitations (prescription) in the field of international sale of goods with a view to the preparation of a preliminary draft of an international convention;

"(b) Confine its work to consideration of the formulation of a general period of extinguive prescription by virtue of which the rights of a buyer or seller would be extinguished or become barred; the Working Group should not consider special time-limits
by virtue of which particular rights of the buyer or seller might be abrogated (e.g. to reject the goods, to refuse to deliver the goods, or to claim damages for non-conformity with the terms of the contract of sale) since these could most conveniently be dealt with by the Working Group on the international sale of goods.

“4. The Working Group, in its work, pay special attention, inter alia, to the following points:

(a) The moment from which time begins to run;
(b) The duration of the period of prescription;
(c) The circumstances in which the period may be suspended or interrupted;
(d) The circumstances in which the period may be terminated;
(e) To what extent, if any, the prescription period should be capable of variation by agreement of the parties;
(f) Whether the issue of prescription should be raised by the court suo officio or only at the instance of the parties;
(g) Whether the preliminary draft convention should take the form of a uniform or a model law;
(h) Whether it would be necessary to state that the rules of preliminary draft convention would take effect as rules of substance or procedure;
(i) To what extent it would still be necessary to have regard to the rules of conflict of laws.

“4. The Commission requests the Secretary-General to notify intergovernmental and international non-governmental organizations active in the field of the date of the meeting of the Working Group. The Secretary-General is also requested to send to the members of the Commission as well as to the foregoing organizations the studies referred to in paragraph 41 above for submission of their comments to the Working Group as soon as possible. The Secretary-General is further requested to transmit to the members of the Commission and the same organizations any drafts produced by the Working Group. It is envisaged that a preliminary draft of a convention can be completed in 1970 or 1971 and the Commission requests the Working Group to report its progress to the Commission at its third session.

47. With regard to the Working Group established under the above decision, several representatives stated that the composition of that Working Group which included the four members of the Commission which had submitted studies on the subject of time-limits and limitations (prescription), was a special arrangement and should not be considered as a precedent for the composition of future working groups that might be established by the Commission.

C. General conditions of sale and standard contracts, Incoterms and other trade terms

48. The subject of general conditions of sale and standard contracts, Incoterms and other trade terms, was considered by the Commission during a general debate held in the course of its 28th to 31st meetings, on 4, 5 and 6 March 1969, and by Committee I in the course of its 8th meeting. At that meeting, Committee I decided that sub-items (d) (general conditions of sale and standard contracts) and (e) (Incoterms and other trade terms) of item 4 of the agenda should be considered together in view of their inter-relationships. The Commission concurred with this view and this report therefore deals with both these sub-items under one heading. A summary of the observations made by members of the Commission and observers of organizations is set out in paragraphs 50 to 58 below.

49. The Commission had before it, with regard to general conditions of sale and standard contracts, a report by the Secretary-General (A/CN.9/18) and a proposal submitted by the United States (A/CN.9/L. 8) and, with regard to Incoterms and other trade terms, a note by the Secretary-General (A/CN.9/14), reproducing a report submitted by the International Chamber of Commerce (ICC) for the second session of the Commission. Several representatives expressed their appreciation for the report of ICC.

50. In discussing the possibilities of promoting the wider use of the existing general conditions of sale and standard contracts as well as of Incoterms, the Commission considered the role of these formulations in the process of the unification of the law of the international sale of goods. Several representatives were of the opinion that there was an interconnexion between general conditions and a uniform law on sale of goods, in view of the fact that the provisions of a uniform law should allow some room for the application of general conditions. The view was also expressed that even if there was no widely accepted uniform law on sales, general conditions of sale and standard contracts would still be useful.

51. One representative expressed the opinion that general conditions of sale offered the best prospects of unification, since they were essentially of a practical nature and were readily and speedily accepted than conventions involving basic legal principles. Other representatives pointed out that the application of general conditions could help to eliminate international commercial disputes and might ultimately lead to the establishment of a uniform trade law.

52. Several representatives commented on the legal character of general conditions and standard contracts. It was pointed out that general conditions, such as those drawn up by the United Nations Economic Commission for Europe (ECE), are applicable only by agreement of the parties and that mandatory rules of the applicable municipal law prevailed over them in the event of conflict. The 1968 General Conditions of the Council for Mutual Economic Assistance (CMEA) on the other hand, being of a mandatory character and thus applicable independently of the will of the parties, prevailed over the whole body of domestic law, including its mandatory rules. Because of that difference, the CMEA General Conditions were considered as being closer in character to a uniform law than to general conditions.

53. The Commission was generally agreed that out of the great number of existing general conditions of
sale and standard contracts, the wider use of those prepared by the United Nations Economic Commission for Europe (ECE) should be promoted. It was considered whether the application outside Europe of these formulations in their present form could be extended. While some of the speakers were of the opinion that the application of the ECE general conditions would not encounter any legal obstacle in countries outside Europe, others expressed the view that some modifications might be needed in order to make these formulations more widely acceptable. One representative considered that some scope should be allowed to economically weaker countries to depart from the provisions of the above-mentioned general conditions for the purpose of protecting their interests.

54. It was also pointed out that the ECE general conditions were not well known outside Europe and this impeded their wider use. The Commission was unanimous in the opinion that the widespread dissemination of the ECE formulations would help in making them more widely known and in promoting their wider use. One representative expressed the view that although he favoured the widespread dissemination of the ECE general conditions, he did not favour recommending these texts as long as no agreement had been reached on the principles governing the international sale of goods.

55. It was generally considered that the method which was most likely to promote the wider use of the ECE general conditions of sale and standard contracts would be the establishment of a joint committee of the four United Nations regional economic commissions or the convening of a meeting of these organs for exploring the possibility of the use, in all regions, of these formulations and to consider any necessary revision of the texts. It was suggested by some representatives that the Organization of American States, the Organization of African Unity and the Economic Commission for Central America should also be invited to participate in such a meeting. At the same time it was emphasized that a considerable amount of preparatory work would be needed before the convening of a meeting of this kind and the financial implications would also have to be considered. In this connexion the Commission welcomed the generous offer made by the representative of Japan to contribute to its work by preparing for its use a comparative study of the ECE general conditions.

56. Several representatives suggested that information on the CMEA General Conditions should also be disseminated. The observer from CMEA said that the secretariat of CMEA would be prepared to supply an English translation of the CMEA general conditions for dissemination.

57. As regards Incoterms, it was generally considered that they should be retained in their present form and their wider use should be promoted. One representative pointed out some differences between interpretations in Incoterms and the definitions used in the United States Uniform Commercial Code.

58. Some representatives stressed the need for formulating new general conditions for tropical products and for use in exports from developing countries.

Decisions of the Commission

59. At its 12th meeting, on 18 March 1969, Committee I approved a recommendation for submission to the Commission.

60. At its 44th meeting, on 26 March 1969, the Commission considered the recommendation of Committee I and unanimously adopted the following decision:

"The Commission decides:

"With regard to general conditions of sale and standard contracts:

1. (a) To request the Secretary-General to transmit the text of the ECE general conditions relating to plant, machinery, engineering goods and lumber to the Executive Secretaries of the Economic Commission for Africa (ECA), the Economic Commission for Asia and the Far East (ECAFE), and the Economic Commission for Latin America (ECLA), as well as to other regional organizations active in this field;

"(b) To request the Secretary-General to make the aforementioned general conditions available in adequate number of copies and in the appropriate languages; the general conditions should be accompanied by an explanatory note describing, inter alia, the purpose of the ECE general conditions, and the practical advantages of the use of general conditions in international commercial transactions;

"(c) To request the regional economic commissions, on receiving the above-mentioned ECE general conditions, to consult the Governments of the respective regions and/or interested trade circles for the purpose of obtaining their views and comments on: (i) the desirability of extending the use of the ECE general conditions to the regions concerned; (ii) whether there are gaps or shortcomings in the ECE general conditions from the point of view of the trade interests of the regions concerned and whether, in particular, it would be desirable to formulate other general conditions for products of special interest to those regions; (iii) whether it would be desirable to convene one or more committees or study groups, on a worldwide or more limited scale, whereby with the participation (if appropriate) of an expert appointed by the Secretary-General, matters raised at a regional level would be discussed and clarified;

"(d) To request the other organizations to which the ECE general conditions are transmitted to express their views on points (i), (ii) and (iii) of subparagraph (c) above;

"(e) The views and comments sought from the regional economic commissions and other organizations should be transmitted to the Secretary-General, if possible, by 31 October 1969;

"(f) To request the Secretary-General to submit, together with the relevant ECE general conditions, a report to the third session of the Commission which should contain (if appropriate) an analysis of the views and comments received from the regional economic commissions and other organizations concerned;
CHAPTER III

INTERNATIONAL PAYMENTS

A. Negotiable instruments

63. The subject of the harmonization and unification of the law of negotiable instruments was considered by the Commission during a general debate held in the course of its 29th to 31st meetings, on 5 and 6 March 1969, and by Committee II in the course of seven meetings, on 6, 7, 13 and 14 March 1969. A summary of the observations made by members of the Commission and observers of organizations during those meetings is set out in paragraphs 65 to 81 below.

64. The Commission had before it the "Preliminary Report on the Possibilities of Extending the Unification of the Law of Bills of Exchange and Cheques" (A/CN. 9/19/annex 1) prepared by the International Institute for the Unification of Private Law (UNIDROIT) for the second session of the Commission. That report examines the solutions by which unification could, in principle, be promoted. Many representatives who spoke on the subject of negotiable instruments expressed their appreciation of the report by UNIDROIT which, although of a preliminary nature, significantly contributed to the work of the Commission.

65. One representative informed the Commission of the existence of a draft uniform law on negotiable instruments for Central America prepared under the auspices of the permanent secretariat of the Central American Treaty for Economic Integration. The observer of the Organization of American States (OAS) informed the Commission that a Draft Uniform Law on Negotiable Instruments for Latin America had been prepared under the auspices of the Inter-American Development Bank, and had been considered by the Inter-American Juridical Committee which decided to consider specific forms of negotiable instruments, starting with cheques and bills of exchange, both for international circulation only.

66. In evaluating the measures that could be adopted in the interest of unification, the Commission noted that there were two principal systems of negotiable instruments law, i.e. that represented by the Geneva Conventions of 1930 and 1931 and that represented by the English Bill of Exchange Act and the United States Negotiable Instruments Law (superseded by article 3 of the Uniform Commercial Code). The Commission recognized that even within these systems complete unification had not yet been achieved. With respect to the system of the Geneva Conventions, some important problems, such as provision, were not dealt with by the uniform laws forming the annex to those Conventions, while also the uniformity which those laws sought to establish had further been compromised by reservations. Similarly, divergencies did exist between the English and American acts and, consequently, in the laws of those countries which had modelled their legislation on one or the other of these acts. There was, however, general consensus that a parallel unification of the two main systems was to be regarded as a difficult and long-term task and that the work of unification should be concentrated on
finding a solution that would reduce the problems arising out of the coexistence of these systems.

67. The Commission also agreed that a mere comparative study of the legal differences between the systems would not suffice for the purpose of the work towards unification and that the listing and analysis of these differences would produce an oversimplified picture of the real degree of dissimilarity. For this reason, the Commission was of the opinion that seeking the views and active support of banking and trade institutions was a prerequisite to any final decision regarding the feasibility of unification and a necessary element of its work.

68. The Commission considered whether the problems that might arise from the coexistence of the Geneva and Anglo-American systems could adequately be met by conflict rules, such as those set forth in the Geneva Convention for the Settlement of Certain Conflicts of Laws in connexion with Bills of Exchange and Promissory Notes of 1930 and the Geneva Convention for the Settlement of Certain Conflicts of Laws in connexion with Cheques of 1931. It was observed, in this connexion, that conflict rules alone would not expedite the international circulation of negotiable instruments and that the uniform law approach, if it proved possible, was more likely to produce satisfactory results. The Commission was also informed by the Observer of the Hague Conference on Private International Law that the Conference had, in 1968, included in its future programme of work, but without giving it priority, an item entitled “The law applicable to negotiable instruments” and that, if the Commission should decide that a conflicts of law convention would contribute to solving existing problems, the Conference would be willing to prepare a draft of such a convention.

69. In the light of the decision taken by it at its first session and the preliminary report by UNIDROIT, the Commission considered the following methods that could, in principle, promote unification:

(a) Securing a wider acceptance of the Geneva Conventions of 1930 and 1931;

(b) Revising the Geneva Conventions of 1930 and 1931 with a view to making the conventions more acceptable to countries following the Anglo-American system;

(c) Creating a new negotiable instrument.

(a) Securing a wider acceptance of the Geneva Conventions of 1930 and 1931

70. The Commission concluded that this method would not offer a sufficient chance of success. The view was, however, expressed that efforts should be made to secure acceptance of the Geneva Conventions by those civil-law countries which had not yet ratified them or adapted their internal legislation to them, or which were studying proposals for uniform legislation in the field; under this view, acceptance of the Geneva Conventions was deemed preferable to maintaining a separate system or attempting to create a new system different from the existing ones.

71. It was pointed out by representatives of common law countries that, by reason, inter alia, of different banking practice and a different approach to formal requirements, the acceptance of the Geneva Conventions by countries following the Anglo-American system would inevitably require a drastic alteration of their domestic practices and legal institutions in the field and that, consequently, there was little or no hope that the governments of these countries could be persuaded to accede to those Conventions. In this connexion, it was emphasized by the representatives of common law countries that the Anglo-American law of negotiable instruments was to a considerable degree the outcome of the practices and usages of bankers and traders and represented, in a sense, the conversion of lex non scripta into lex scripta; that the development of the law still depended on commercial customs and practice and on decisions of the judiciary; that the rules of common law continued to apply where they were not incompatible with statutory provisions, as evidenced by the English Bill of Exchange Act in which such common law rules as those regarding sufficiency of consideration, limitation and the capacity of the parties were preserved; and that the way of legal thinking and of formulating and interpreting legal provisions in common law countries was different from that obtaining in civil law countries.

72. On their part, representatives of civil law countries stated that the Geneva Conventions could generally be deemed to represent a satisfactory system of negotiable instruments law which had given rise to few difficulties, but they recognized that the Conventions in their present form could not be recommended unreservedly for universal application. In this connexion, some representatives referred to the lack of completeness of the Geneva Conventions and to the fact that some of their provisions had given rise to divergent interpretations, particularly in the context of new practices which had been developed since the adoption of the Conventions.

(b) Revision of the Geneva Conventions of 1930 and 1931

73. Most representatives were of the opinion that a revision of the Geneva Conventions with a view to making them more acceptable to countries following the Anglo-American system would not be an effective method of securing international uniformity in the areas where such uniformity was desirable, i.e. international transactions. These representatives drew attention to the fact that the uniform laws annexed to the Geneva Conventions applied to both national and international transactions and that it would be unrealistic to expect States already party to the Conventions or the countries following the Anglo-American system to modify their domestic law and practice for the sole purpose of achieving a greater degree of uniformity where international transactions were concerned.

74. Some representatives, however, considered that the solution consisting of revising the Geneva Conventions should not be abandoned outright in view of the fact that the essential legal differences between the Conventions and the Anglo-American laws were few and that, in some cases, these differences were overcome in practice or led to similar results, as in the case of protest.

and, to a lesser extent, in respect of forged endorsements. It was pointed out in this respect that although under English and American law, protest, as a condition to the right of recourse, need not be made where an inland bill had been dishonoured, it was essential in the case of a foreign bill. In the result, at least in so far as international transactions were concerned, the Anglo-American system coincided with the Geneva system under which protest for non-acceptance or non-payment was the general rule. As to the problem of forged signatures, it was emphasized that although under the common law a forged signature was inoperative and the English and American law preserved that rule, the English Bill of Exchange Act, in section 60, provided an exception in that in certain circumstances it protected bankers paying a bill with forged endorsement from the consequences of the bill being void. In this connexion, reference was also made to the concept of abstraction, in the civil law of countries following the Geneva system, by virtue of which the rights of the holder of a negotiable instrument were not dependent on the underlying transaction or causa which explained why, in the case of a forged endorsement, a good title could nevertheless be passed by the endorser to the holder.

(c) A new negotiable instrument for international transactions

75. It was generally considered that the method which was most likely to produce tangible results in the Commission's endeavours to secure uniformity would be the creation of a new negotiable instrument. In reaching this conclusion, many members stressed that their preference for this method should not be construed as the expression of a final opinion on the feasibility and desirability of a new instrument. Such an opinion, it was felt, could only be formed after a careful study of the issues involved had been made on the basis of a questionnaire to be addressed to banking and trade institutions.

76. Some representatives took the view that the scope of the new instrument should be restricted to matters regarded as indispensable for its issue and international circulation. They were also of the opinion that the question whether the new instrument should be usable both as a bill of exchange and a cheque should be left open until full evidence on the importance of each of these instruments in international transactions had been obtained.

77. The discussions in the Commission showed that most representatives favoured an instrument, the use of which would be optional. The view was however also expressed that the optional character of the new instrument would be one of the points which should be further clarified by research and that nothing would be gained by a premature decision in this respect.

78. One representative considered that the question whether the new instrument should be used in international transactions only, or also in domestic transactions, should not be decided now. It would, in his view, be possible to envisage a situation in which, in respect of internal transactions, the present domestic negotiable instruments law would subsist during a certain period, after which the use of the new instrument would become mandatory.

79. In conformity with its earlier conclusion that any study of possible measures of unification should be made on the basis of an exhaustive survey of the views and suggestions of banking and trading institutions, the Commission took the view that a questionnaire regarding the creation of a new negotiable instrument should be drawn up and addressed to these institutions. The Commission, having heard statements by the observers of the International Monetary Fund (IMF, UNIDROIT and the International Chamber of Commerce (ICC) in which these organizations expressed their readiness to co-operate with the Commission, was of the opinion that the questionnaire should be drawn up by the Secretary-General in consultation with these organizations.

80. Some representatives considered that, for the purpose of drawing up the questionnaire, a preliminary study on the nature and characteristics of the projected instrument was indispensable. Other representatives suggested that the questionnaire should be accompanied by a brief explanatory memorandum, but that the relevant questions should be framed in such a way as to permit the addressees to state their views and suggestions freely.

81. One representative expressed the view that it would be useful to invite organizations such as UNIDROIT to prepare technical studies on certain questions relating to the circulation and effectiveness of negotiable instruments; the studies, which would show that in practice similar solutions were reached despite divergent legal rules, would facilitate the harmonization of legislation and judicial practice. Other representatives who shared this view pointed out that such studies would also assist the Commission in its work on a new negotiable instrument.

Decisions of the Commission

82. At the 6th meeting of Committee II, on 13 March 1969, the representative of Ghana submitted a proposal for a recommendation to the Commission on behalf of Ghana, India, Kenya, Tunisia, the United Arab Republic and the United Republic of Tanzania. After certain amendments had been made, the proposal was approved by Committee II at its 7th meeting, on 13 March 1969, for submission to the Commission.

83. At the 7th meeting of Committee II, on 13 March 1969, the representative of Chile submitted a proposal for a recommendation of the Commission which was approved by Committee II at its 8th meeting, on 14 March 1969.

84. The Commission, at its 38th and 39th meetings, on 21 March 1969, considered the two recommendations of Committee II and, at its 39th meeting, adopted unanimously the texts and decisions set out in paragraphs 85-89 below.

(a) Creation of a new negotiable instrument for international transactions

85. With regard to the three possible measures described in paragraph 69 above, which could in principle
be adopted in order to promote the harmonization and unification of the law relating to negotiable instruments, the Commission is of the opinion that the first measure, i.e. securing a wider acceptance of the Geneva Conventions of 1930 and 1931 on negotiable instruments, does not offer a sufficient chance of success in the context of a world-wide unification of negotiable instruments law. The Commission considers, however, that an attempt should be made to obtain acceptance of Geneva Conventions by those countries belonging to the civil law system which have not yet ratified them, or have not yet adapted their internal legislation to them, or else are studying proposals for uniform legislation in the field.

86. As regards the second possible solution, consisting in a revision of the Geneva Conventions with a view to making them more acceptable to countries following the common law system, the Commission is of the opinion that, while a revision of the Geneva Conventions could possibly lead towards unification or harmonization and that solution should therefore not be rejected outright, problems in international transactions arising out of the existence of two major systems of law on negotiable instruments might better be solved by the third solution, consisting of the creation of a new negotiable instrument. The main reason for this conclusion is that the uniform laws forming the annex to the Geneva Conventions apply to both national and international transactions and that it would not be practicable to ask countries to modify well established rules and practices that have been developed over a considerable period of time and which appear to give full satisfaction in domestic transactions.

87. The Commission therefore decides to study further the possibility of creating a new negotiable instrument to be used in international transactions only. To this end, the Commission requests the Secretary-General:

(a) To draw up a questionnaire in consultation with the International Monetary Fund, UNIDROIT, the International Chamber of Commerce and, as appropriate, with other international organizations concerned, taking into consideration the views expressed in the Commission;

(b) To address such a questionnaire to Governments and/or banking and trade institutions as appropriate;

(c) To make the replies to the questionnaire available to the Commission at its third session, together with an analysis thereof, prepared by the Secretary-General in consultation with the organizations mentioned in sub-paragraph (a) above.

(b) Studies on negotiable instruments

88. The Commission notes that, on certain concrete points related to the circulation and effectiveness of negotiable instruments, the commercial practices of the various countries have, in the face of specific difficulties, produced similar solutions despite the differences in legal systems. The Commission is therefore of the opinion that a comparative technical study of those questions on which it may seem possible to realize a substantial uniformity will make it possible to determine the reason for differences in legislation and may, at the same time, indicate ways of reducing such differences. Moreover, such studies and their distribution could also facilitate the harmonization of judicial practice, including that of countries having similar legislation relating to negotiable instruments, and would undoubtedly be useful also in promoting the progressive harmonization of legislation, at any rate on certain specific questions.

89. The Commission therefore requests the Secretary-General to invite, at the appropriate time, the International Monetary Fund, UNIDROIT, the International Chamber of Commerce and the other organizations concerned to prepare studies on, inter alia, the following questions arising in the main legal systems, with a commentary on the solutions that have been adopted on those questions in both commercial and judicial practice:

(a) The problem of forged signatures and endorsements;

(b) The stipulation of protests and the effects of failure to advise in cases of non-payment;

(c) The extent of liability under signature and guarantee endorsement.

B. Bankers' commercial credits

90. The subject of bankers' commercial credits was considered by the Commission at its 29th and 31st meetings, on 5 and 6 March 1969, during the general debate and by Committee II in the course of four meetings, on 10, 13 and 14 March 1969. A summary of the observations made by members of the Commission and observers of organizations during those meetings is set out in paragraphs 92 and 93 below.

91. The Commission had before it a study entitled "Documentary credits" (A/CN.9/15, annex I), submitted by ICC for the second session of the Commission. Many representatives expressed their appreciation of the study of ICC and stated that the Uniform Customs and Practice of Documentary Credits (1962 revision), drawn up by ICC, gave full satisfaction in practice.

92. Some representatives drew attention to the fact that, in some instances, difficulties of interpretation in respect of certain articles of the Code had arisen, and suggested that future work in the field of documentary credits should be concentrated on improving the Code.

93. The Commission noted with satisfaction that ICC endeavoured to keep the Code under constant review and that the problem of uniform interpretation was considered, among other matters relating to the Code, at the half-yearly meetings of the ICC's Commission on Banking Techniques and Practice. The view was also expressed that the provisions of the Code should, in due course, take account of the problems that arose in the context of new forms of inter-modal transport, i.e. transport by containers. The Commission was informed by the Observer of ICC that that Organization was at present considering such problems and would be willing to submit a report to the Commission at the appropriate time.

Decision of the Commission

94. At the 7th meeting of Committee II, on 13 March 1969, the representative of the United Kingdom
submitted a recommendation for submission to the Commission which was approved by Committee II at the same meeting.

95. At its 38th and 39th meetings, on 21 March 1969, the Commission considered the recommendation of Committee II and, at its 39th meeting, unanimously adopted the following decision:

"The Commission notes with approval the valuable contribution to the development of international trade made by the "Uniform Customs and Practices for Documentary Credits" of the International Chamber of Commerce ("the Code") and expresses its satisfaction with the existing arrangements of the International Chamber of Commerce for reviewing the operation of, and when appropriate revising, the Code.

"The Commission requests the Secretary-General:

"(a) To draw the attention of Governments to the contribution which employment of the Code can make to facilitating international trade;

"(b) To draw the attention of such Governments to the desirability of informing the International Chamber of Commerce of difficulties which arise in connexion with the use of the Code either by reason of divergencies of interpretation or by reason of the inadequacy or unsuitability of any of its provisions in relation to commercial needs;

"(c) To inform such Governments that the Commission commend the use of the Code in relation to transactions involving the establishment of a documentary credit; and

"(d) To inform the third session of the Commission of the steps taken to implement the request set out in sub-paragraphs (a), (b) and (c) above and of any work, in progress or contemplated, on the part of the other organizations which may affect the procedures used in connexion with banker's commercial credits.

"The Commission decides, with a view to facilitating the dispatch of the work of the Commission's third session, that the subject of bankers' commercial credits shall be included in the work programme of that session only to the extent necessary to consider any report of the Secretary-General pursuant to sub-paragraph (d) above.

C. Guarantees and securities

96. The subject of guarantees and securities was considered by Committee II at its 4th and 5th meetings, on 10 March 1969, and at its 7th and 8th meetings, on 13 and 14 March 1969.

97. The Commission had before it the report of the Secretary-General on Guarantees and Securities as related to International Payments (A/CN.9/20 and Add.1). Owing to the fact that this report was not available for examination by Governments prior to the second session of the Commission, many representatives, while expressing appreciation for the report, felt that they could not give adequate consideration to it at this stage. The Commission also had before it a proposal submitted by Hungary concerning the preparation of uniform rules and practice relating to bank guarantees (A/CN.9/L.13) to which, for the same reasons, the Commission was unable to give proper consideration. In addition, the Commission heard a statement by the observer of the International Chamber of Commerce (ICC) on the work of that organization in the field of bank guarantees.

Decision of the Commission

98. At its 8th meeting, on 14 March 1969, Committee II approved a proposal for a recommendation for submission to the Commission.

99. The Commission, at its 38th and 39th meetings, on 21 March 1969, considered the proposal of Committee II and, at its 14th meeting, unanimously adopted the following decision:

"The Commission:

"1. Decides to defer consideration of the subject of guarantees and securities until its third session;

"2. Requests the Secretary-General:

"(a) To invite members of the Commission to submit such observations as they might wish to make on the report of the Secretary-General on guarantees and securities (A/CN. 9/20 and Add.1);

"(b) To supplement his report on guarantees and securities if additional material should be available which, in his opinion, would be useful to the Commission when it considers the subject at its third session;

"(c) To invite the International Chamber of Commerce to submit to the Commission at its third session a report on its work in the field of certain types of bank guarantees, such as performance guarantees, tender or bid bonds and guarantees for repayment of advances made on account in respect of international supply and construction contracts.

D. Co-ordination of the work of organizations in the field of international payments

100. The Commission, at its 28th meeting, on 4 March 1969, requested Committee II to consider the question of co-ordination in respect of each of the three items under international payments, i.e. negotiable instruments, bankers' commercial credits, and guarantees and securities. The Commission was of the opinion that its decisions in respect of each of those items and the working methods contemplated therein would lead to a satisfactory co-ordination of the work of organizations in the field of international payments and that, at the present stage of its work, no further action was required in respect of co-ordination of those items.

CHAPTER IV

INTERNATIONAL COMMERCIAL ARBITRATION

101. The subject of international commercial arbitration was considered by the Commission at its 29th to 31st meetings, on 5 and 6 March 1969, during the general debate and by Committee I in the course of three meetings, on 19, 20 and 21 March 1969.
102. The Commission had before it a report by the Secretary-General on international commercial arbitration (A/CN.9/21 and Corr.1), a bibliography on arbitration law (A/CN.9/24/Add.1 and 2), and a note on the United Nations Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (A/CN.9/22 and Add.1) indicating the position in respect of ratifications of that Convention and the replies of certain States indicating whether or not they intended to accede to it.

103. The representatives who spoke on this question congratulated the Secretariat on its report which, as a detailed study in depth, was a valuable working document.

104. Most representatives considered that the Commission should not for the time being undertake to draft a new convention on international commercial arbitration since the preparation of an international convention on commercial arbitration involved considerable difficulties and, to judge from the pace of the work which had led to the adoption of the existing conventions, was bound to be a long-term undertaking.

105. For those same reasons, other representatives pointed out that, certain imperfections notwithstanding, it would be a mistake to tamper with the existing conventions, particularly the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 and the European Convention on International Commercial Arbitration of 21 April 1961, which had proved their value.

106. Almost all the representatives considered that the best course, for the time being, was to concentrate efforts on information and research with reference to the 1958 Convention and to try to obtain the largest possible number of ratifications or accessions to that Convention.

107. The general opinion was that the most effective course for the Commission would be to concern itself with problems of the practical application and interpretation of existing conventions, since those conventions were interpreted in various ways and it would be desirable to encourage a uniform interpretation as far as possible. Reference was made, in particular, to the difficulties in connexion with the interpretation of article 2 of the United Nations Convention of 1958. Some representatives considered that it would be helpful, in the efforts to arrive at a uniform interpretation of the conventions, to have a compendium, or at least an abstract, of commercial arbitral awards, when the parties had no objection to their publication.

108. That obviously did not mean that international commercial arbitration did not involve many other questions, and some representatives advocated setting up a small working party to consider those questions and submit practical suggestions at the next session.

109. Other representatives suggested the appointment of a special rapporteur to undertake a thorough study of the most important problems relating to the application and interpretation of the existing conventions and of other related problems.

110. One representative, while agreeing that a special rapporteur should be appointed, advocated sending a questionnaire to Governments and interested organizations with a view to obtaining information on: (a) the matters listed in chapter II of the Secretary-General’s report (A/C.9/21 and Corr.1); (b) the conventions, agreements and regulations or other instruments to which the addressee was a party; (c) the texts of relevant national laws, including any laws governing the application of international instruments; (d) any of those instruments which had, in particular, to be clarified by the texts of arbitral awards or judicial decisions along with the texts of these awards and decisions; (e) measures which the Commission might adopt with a view to the unification and harmonization of international commercial arbitration law. That representative considered that the special rapporteur could base his report on the replies to the questionnaire.

Decision of the Commission

111. At its 14th meeting, on 20 March 1969, Committee I approved a recommendation for submission to the Commission.

112. The Commission, at its 44th and 45th meetings, on 26 March 1969 considered the recommendation of Committee I and unanimously adopted the following decision:

“The Commission decides to appoint Mr. Ion Nestor (Romania) as Special Rapporteur on the most important problems concerning the application and interpretation of the existing conventions and other related problems. The Special Rapporteur should have the cooperation, for documentary material, of members of the Commission and various interested intergovernmental and international non-governmental organizations.

“The Commission expresses the opinion that the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 should be adhered to by the largest possible number of States.

113. The Special Rapporteur stated that the preliminary report which he proposed to submit to the third session of the Commission would deal in particular with the interpretation and application of the United Nations Convention of 1958.

CHAPTER V
INTERNATIONAL LEGISLATION ON SHIPPING

114. The Commission discussed this question at its 33rd, 34th, 40th, 41st and 46th meetings, on 12, 24 and 27 March 1969. It had before it a note by the Secretary-General (A/CN.9/23) reviewing the consideration given to the question at the Commission’s first session and reporting on the action taken by UNCTAD in the matter, including UNCTAD resolution 14 (II) of 25 March 1968, entitled “International shipping legislation”, and resolution 46 (VII) adopted by the Trade and Development Board on 21 September 1968. The note also gave particulars of the action taken in the...
matter by the General Assembly at its twenty-third session (resolution 2421 (XXIII) of 18 December 1968 and report of the Sixth Committee (A/7408, para. 17)) and referred to the establishment of a joint shipping legislation unit (UNCTAD secretariat/Office of Legal Affairs). A note on the role of the Commission in international legislation on shipping and the text of resolution C.44 (XXI) adopted by the Council of the Inter-Governmental Maritime Consultative Organization (IMCO) on 29 November 1968 were annexed to the note.

115. All the representatives who spoke on this item took the view that the Commission was competent to deal with the question of international legislation on shipping.

116. However, a difference of opinion arose with regard to the right time for the Commission to take up this question, the methods of work and the exact role which it should play in relation to the other organizations or bodies dealing with maritime law. A few representatives also raised the question of the subjects with which the Commission should deal.

117. Nearly all representatives were of the opinion that the Commission should give the item priority in view of the provisions of UNCTAD resolution 14 (II), Trade and Development Board resolution 46 (VII) and the recommendation made in General Assembly resolution 2421 (XXIII) that the Commission should consider the inclusion of international legislation on shipping among the priority topics in its work programme.

118. In the view of the Commission international legislation on shipping was an integral part of international trade law for whose unification and harmonization the Commission had been established; the Commission could hardly omit dealing with laws governing contracts for the delivery of goods to buyers in foreign countries, although that did not mean that it had an exclusive right to study such legislation. Other international bodies, especially the International Maritime Committee, had already made a useful contribution.

119. Some representatives expressed the view that the Trade and Development Board, in its resolution 46 (VII), had instructed the Committee on Shipping of UNCTAD to create a working group to review commercial and economic aspects of international legislation on shipping, but not its legal aspects. Many representatives argued that, if the Commission did not undertake to draft appropriate international conventions, it was to be thought that UNCTAD, which had asked the Commission to do so, would take other steps, as provided for in its resolution 14 (II), to finalize the drafting. In order to avoid any conflict with UNCTAD, which was not competent to undertake the codification and harmonization of international trade law, the Commission should co-operate with the UNCTAD working group while retaining complete freedom of action with regard to the legal aspects of international legislation on shipping.

120. Some representatives, while recognizing that the Commission was competent to deal with the subject, considered that the most important problem was that of co-ordinating its activities with those of IMCO, UNCTAD and the International Maritime Committee. Any overlapping of activities should be avoided, for it would inevitably lead to chaos. They took the view that international legislation on shipping was a vast and complex topic requiring very specialized expert knowledge for which the Commission was unprepared. Since UNCTAD had already taken up the question, it would be advisable to wait until the UNCTAD working group had reviewed the economic and commercial aspects of such legislation; the results of its work would help to identify the areas in which action by legal bodies was required.

121. Some representatives considered that the Commission should not wait until the UNCTAD working group was set up before deciding to begin its work on the subject. Furthermore, while the Commission could act in a co-ordinating capacity, its terms of reference as laid down in General Assembly resolution 2205 (XXI), authorized it to do original work and prepare draft conventions. These representatives considered that the subjects to be recommended for priority consideration should include the question of freighting and the charter-party, the contract of carriage, the maritime insurance contract and the bill of lading.

122. Certain representatives proposed that the Secretariat should be requested to carry out a study with a view to classifying the topics and allocating them among the bodies concerned, to maintain and strengthen liaison with those bodies, and to widen the field of operations of the joint unit. The relevant report by the Secretariat would enable the Commission to determine more precisely, and with a fuller understanding of the difficulties, to what questions it should give priority.

123. Other representatives recommended that a small permanent liaison committee should be set up to study any suggestions that might be put forward by the working group on international shipping legislation whose establishment the UNCTAD Committee on Shipping was to consider at its next session. Some objected that a small committee, apart from duplicating the work of the UNCTAD committee, would be insufficiently representative and that its composition would be difficult to decide. They preferred to entrust the function of liaison to the Secretariat, while keeping in mind the role of the joint unit of the UNCTAD secretariat and the United Nations Office of Legal Affairs.

124. In the course of the discussion, IMCO and the International Maritime Committee announced that they were ready to co-operate with the Commission on that point.

**Decision of the Commission**

125. A draft resolution was submitted by Ghana and India (A/CN.9/L.17).

126. Another draft resolution was submitted by Belgium and Italy (A/CN.9/L.18).

127. Later Argentina, Brazil, Chile, Ghana, India, Iran, Kenya, Mexico, Tunisia, the United Arab Republic and the United Republic of Tanzania submitted a revised version (A/CN.9/L.17/Rev.1) of the draft resolution previously submitted by Ghana and India, the preamble to which reproduced most of the preamble to the Belgian-Italian draft.
128. Informal consultations were held between various regional groups and resulted in the submission at the Commission’s 46th meeting, on 27 March 1969, of a draft resolution sponsored now by the original eleven States, together with Belgium and Spain (A/CN. 9/L.17/Rev.2). Accordingly, the draft resolution submitted by Belgium and Italy was not formally introduced.

129. The sponsors, during the discussion on the draft resolution, stressed the efforts that had been made to arrive at a solution acceptable to all and paid a tribute to the spirit of co-operation which had prevailed in the informal consultations.

130. Certain representatives, while expressing support for the joint draft resolution, said that they did so in a spirit of compromise but made observations with regard to the financial and technical aspects of the establishment of the working group proposed in the draft resolution.

131. Several representatives expressed the view that the establishment of such a working group might greatly facilitate the discussion of the question at the Commission’s third session.

132. One representative said that the terms of reference of the working group should be consistent with the terms of resolution 14 (II) of 25 March 1968 and be based on the recommendations of the UNCTAD Committee on Shipping.

133. At its 46th meeting, on 27 March 1969, the Commission unanimously adopted draft resolution A/CN.9/L.17/Rev.2, which reads as follows:

"The United Nations Commission on International Trade Law,

"Recalling resolution 2421 (XXIII), by which the General Assembly recommended the Commission to consider adding international legislation on shipping to its list of priority topics,

"Noting that in the same resolution the General Assembly took note with satisfaction of the Commission's intention to carry out its work in co-operation with organs and organizations concerned with the progressive harmonization and unification of international trade law,

"Having taken note of the Secretary-General’s note on consideration of inclusion of international legislation on shipping among the priority topics in its work programme (A/CN.9/23), in which the developments in this field since the Commission’s first session are described,

"Aware of the importance of the question of international shipping and of the desirability of close collaboration with the organs and organizations already working in this field,

"Expressing gratification at the full co-operation offered by the Inter-Governmental Maritime Consultative Organization and the International Maritime Committee, to whose work it pays tribute,

"Taking account, in particular, of resolution 14 (II) adopted at the second session of the United Nations Conference on Trade and Development on 25 March 1968, by which the Conference requested its Committee on Shipping to create a working group on international shipping legislation, and resolution 46 (VII) adopted in this connexion on 21 September 1968 by the Trade and Development Board,

"Confirming its wish to see close co-operation established between the Commission and UNCTAD in accordance with the hope expressed by the Chairman of its first session, to whom it expresses its appreciation, when at the Commission’s request he apprised the UNCTAD Conference at its second session of the Commission’s views,

"Considering that a duplication of work should be avoided,

"Noting that the UNCTAD Committee on Shipping will hold its next session at Geneva in April 1969,

"Having considered the item “International Legislation on Shipping” at its second session:

1. Decides to include international legislation on shipping among the priority items in its programme of work;

2. Requests the Secretary-General to prepare a study in depth giving inter alia a survey of work in the field of international legislation on shipping done or planned in the organs of the United Nations, or in intergovernmental or non-governmental organizations, and to submit it to the Commission at its third session;

3. Decides to set up a Working Group consisting of representatives of Chile, Ghana, India, Italy, the United Arab Republic, the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland, which may be convened by the Secretary-General, either on his own initiative or at the request of the Chairman, to meet some time before — and preferably shortly before — the commencement of the third session of the Commission to indicate the topics and method of work on the subject, taking into consideration the study prepared by the Secretary-General, if it is ready, and giving full regard to the recommendations of UNCTAD and any of its organs, and to submit its report to the Commission at its third session;

4. Invites the Chairman of its second session and, if he is unable to attend, his nominee from among the members of the Commission to attend the session of the UNCTAD Committee on Shipping to be held at Geneva in April 1969 and to inform that Committee of the course of the discussion in the Commission at its second session and the Commission’s desire to strengthen the close co-operation and effective co-ordination between the Commission and UNCTAD;

5. Requests the Secretary-General, should it be decided to convene the Working Group referred to in paragraph 3 above, to invite States members of the Commission and intergovernmental and non-governmental organizations active in the field to be present at the meeting of the Working Group, if they choose to do so."
CHAPTER VI
A. REGISTER OF ORGANIZATIONS AND REGISTER OF TEXTS

134. The Commission noted with satisfaction that the General Assembly, by its resolution 2421 (XXIII) of 18 December 1968, authorized the establishment by the Secretary-General of a register of organizations and a register of texts. The Commission also noted that, with regard to the register of texts, the General Assembly requested that "the Commission should consider further at its second session the precise nature and scope of such a register in the light of the report of the Secretary-General and the discussions on the registers" at the twenty-third session of the General Assembly and that the register should be established "in accordance with the further directives to be given by the United Nations Commission on International Trade Law at its second session". Accordingly, the Commission, at its 29th meeting, on 5 March 1969, during the general debate, and Committee II in the course of three meetings on 14, 17 and 18 March 1969, reconsidered in detail the nature and scope of the registers taking particular account of the financial implications and of the views which had been expressed at the General Assembly's twenty-third session. The Commission had before a note by the Secretary-General on this question (A/CN.9/24) prepared for the second session of the Commission, as well as a report of the Secretary-General on the financial and administrative implications of the registers which had been submitted to the General Assembly at its twenty-third session (A/C.6/L.648).

135. The Commission considered possible ways in which the registers could be established to achieve their purpose fully in the most economical way. The Commission was given by the Representative of the Secretary-General detailed information in amplification of the statement of financial implications contained in A/C.6/L.648.

Nature of the registers

136. There was general agreement that the registers should serve the dual purpose of assisting the Commission in its own work and of providing the outside world (e.g. Governments, universities, organizations, commercial circles) with readily accessible texts of international legal instruments and related material. Several representatives expressed the view that the register of texts should in the initial stage only list the titles of international instruments and their sources and that the Commission should take a decision on the publication of the full texts of the instruments at its third session, taking into account possible economies in the publication of the full texts. Most representatives were of the opinion that the register of texts, in order to serve its purpose fully, should at the outset include the texts of international instruments and not merely their title and source, and should be published in the English, French, Russian and Spanish languages.

Scope of the registers

137. Most representatives took the view that the fields to be covered by the registers should, in principle, coincide with the priority topics included, or to be included, in the Commission's programme of work.

138. As to the register of organizations, the view was expressed that this register should also contain information on the work of the Commission itself.

139. As to the register of texts, since for financial and practical reasons it would not seem possible to publish the register immediately in its entirety, most representatives were of the opinion that work on the register should be done in stages. Some representatives were of the opinion that the register should, in the first stage, cover the international sale of goods (corporeal moveables) and negotiable instruments. Other representatives, while agreeing with this approach, suggested that priority should also be given to bankers' commercial credits and to guarantees and securities in view of the great importance of these instruments in international trade. Another representative suggested that the Commission should only set forth broad guidelines regarding the establishment of a register of texts in successive stages, and that it should be left to the Secretary-General to consider whether, in the first stage, material should be included on guarantees and securities, in addition to the material on the international sale of goods and on negotiable instruments. It was further suggested that the first stage should also include a list of titles and sources of international instruments in the fields to be covered by the register and the status of these instruments.

Decision of the Commission

140. At its 12th meeting, on 20 March 1969, Committee II approved recommendations for submission to the Commission.

141. At its 38th and 39th meetings, on 21 March 1969, the Commission considered the recommendations of Committee II and, at its 39th meeting, unanimously adopted the following decision:

"1. The Commission confirms its earlier view, expressed in chapter V of the report on the work of its first session, namely, that the registers should reproduce the full text of existing international instruments and should be published in English, French, Russian and Spanish. It considers that two specific steps should be taken to reduce expenditure: (a) so far as possible, when there is no official translation of an international instrument, existing unofficial translations should be used as to minimize translation costs which are a major element of the cost estimates; members of the Commission should be encouraged to make such translations available to the Secretary-General; and (b) the registers should follow a form which would make them suitable for commercial sale;

"2. The Commission decides to add to the fields already indicated in paragraph 5 of chapter V of the report on its first session the fields of guarantees and securities and international shipping legislation;

"3. The Commission requests the Secretary-General to include information on the work of the Commission in the register of organizations;"
4. The Commission requests the Secretary-General to commence work on the register of texts by publishing, as the first stage, the relevant material on the international sale of goods, on negotiable instruments, on bankers' commercial credits and on guarantees and securities. It considers that the register of texts, as established in the first stage, should, in addition, to the texts of international instruments in the fields mentioned above list the title and sources of instruments in all fields to be covered by the register, so as to increase immediately the usefulness of the register of texts. It also considers that the list of instruments set out in annex II of the report of the Secretary-General on the financial and administrative implications of the establishment of the register (A/C.6/L.648) should be complemented as follows:

(a) As regards the law on sale of goods (annex II, I, 1), the register should also reproduce the text of the "General Conditions of the Technical Servicing of Machinery, Equipment and other Commodities included in Deliveries by CMEA Countries' Foreign Trade Organizations" (CMEA General Conditions of Technical Servicing of 1962);

(b) As regards the law of negotiable instruments (annex II, I, 4), the register should also reproduce the text of the uniform regulation formulated at the Hague Conference of 1912.

5. The Commission decides to review at its third session the progress made in establishing the register and to take any necessary further decision, taking account of the financial implications of the project and of the views expressed in the General Assembly.

B. Bibliography

142. The Commission noted with satisfaction the progress made by the Secretary-General towards the compilation of a bibliography of published books, articles and commentaries on international conventions, model and uniform laws, customs and usages of a multilateral nature in fields covered by the register of organizations and the register of texts. The Commission was of the opinion that the bibliography would prove to be of great assistance to the work of the Commission and that it should also prove to be useful to the outside world. The view was expressed that its value would be enhanced if it included material from a wider number of countries. In this respect, the Commission took note of a statement by the representative of the Secretary-General that work was being done to extend the bibliography to cover materials from other countries. The Commission was not in a position to consider the sample of the bibliography concerning arbitration law in detail and refrained, therefore, from making specific suggestions regarding the scope and concept of that sample. The Commission expressed its appreciation for the assistance rendered by the Parker School of Foreign and Comparative Law of Columbia University and for the work accomplished by Professor P. Herzog of Syracuse University (New York) in the preparation of the bibliography.

CHAPTER VII

CO-ORDINATION OF THE WORK OF ORGANIZATIONS IN THE FIELD OF INTERNATIONAL TRADE LAW; WORKING RELATIONSHIP AND COLLABORATION WITH OTHER BODIES

143. At its 32nd meeting, on 11 March 1968, the Commission decided to consider the question of co-ordination (item 9) and the question of working relationship and collaboration with other bodies (item 10) together, in view of the close inter-relationship of these questions. The questions were considered by the Commission in the course of its 32nd meeting and by Committee II in the course of two meetings on 20 and 21 March 1969. A summary of the discussions is set out in paragraphs 146-153 below.

Co-ordination of the work of organizations in the field of international trade law

144. The Commission noted that the General Assembly, in paragraph 6 (e) of its resolution 2421 (XXIII) on the report of the United Nations Commission on International Trade Law, recommended that the Commission should "consider at its second session ways and means of promoting co-ordination of the work of organizations active in the progressive harmonization and unification of international trade law and of encouraging co-operation among them".

145. The Commission had before it a report of the Secretary-General entitled "Co-ordination of the work of organizations active in international trade law" (A/CN.9/25), setting out the background of the question of co-ordination in general, a summary of views expressed by Member States and international organizations on the ways and means by which co-ordination could be promoted and general observations and suggestions on this point. In addition, the Secretary-General's report set out a number of specific questions which, in the opinion of the Secretary-General, arose in the context of co-ordination.

146. Many representatives recognized that to secure a greater measure of co-ordination of the work of organizations active in the field of international trade law was an important task to which the Commission should continue to give full attention. At the same time, the view was expressed by a number of representatives that the Commission should not concern itself solely with co-ordination, however desirable co-ordination might be, but should engage in unification work of its own, including the actual preparation of draft conventions, enlisting the help of interested organizations as appropriate.

147. Several representatives took the view that the Commission's approach to the question of co-ordination should above all be pragmatic and flexible; they emphasized that the present practice of inviting intergovernmental and non-governmental organizations to send observers to the sessions of the Commission and to examine with them the division of work on priority topics should be continued and further developed over the years to come. These representatives also stressed the fact that the very existence of the Commission creat-
ed a greater awareness among organizations of the necessity to develop the law of international trade in a coordinated way. One representative expressed the opinion that the register of organizations would be helpful to other organizations in co-ordinating their work among themselves. The view was also expressed that the task of co-ordination should not be conceived as representing the static side of the Commission’s work but should rather be considered as constituting a dynamic process which in itself shaped the development of international trade law.

148. The Commission also considered the questions set out in the report of the Secretary-General on co-ordination (A/CN.9/25, para. 18). As regards the collection of information on activities of organizations active in the field of international trade law for purposes of co-ordination, most representatives took the view that such information was necessary for purposes of co-ordination and should relate only to the priority topics included in the work programme of the Commission. One representative was of the opinion, however, that the information to be obtained should relate to all aspects of international trade law. As to the question whether the information so obtained should be disseminated, most representatives replied in the affirmative and considered that the information should be made available to the Commission in the form of background papers to be prepared from time to time by the Secretary-General.

149. The report of the Secretary-General also raised the question whether the information so given would duplicate the register of organizations and their work to the extent that both publications would include information on the same topics. The Commission was of the opinion that the register of organizations should be a register listing the work, main interests and future programme of work in a general way, whereas the information to be given to the Commission for purposes of co-ordination would supply information on certain specific subject matters in greater detail. The Commission accordingly expressed the view that there would not be any danger of duplication.

150. The Commission noted the questions raised in paragraph 19 of the Secretary-General’s report on co-ordination concerning appropriate methods and procedures for achieving co-ordination. The Commission was of the opinion that the pragmatic approach and practice followed so far had proved satisfactory and could therefore be deemed to constitute a proper basis for the further development of such methods and procedures. The Commission further took the view that it should be left to the discretion of the Secretary-General to place before the Commission, in the light of experience gained, further recommendations concerning the action of the Commission in the matter of co-ordination.

Working relationship and collaboration with other bodies

151. The Commission considered the question of working relationship and collaboration with other bodies in the light of the note by the Secretary-General (A/CN.9/26) which provided the Commission with information on collaboration established since the end of the first session with United Nations organs and other organizations on arrangements made for observers of international organizations to attend the second session, and on organizations placed on the mailing list for documents relating to the Commission’s activities. The Commission had also before it the earlier note of the Secretary-General on this question, prepared for its first session, which it had not been able to consider in detail at the time (A/CN.9/7).

152. There was general recognition that the collaboration and working relations that had been established between the Commission and the United Nations organs and other organizations since the inception of the Commission’s work had proved satisfactory. It was noted in particular that collaboration in matters relating to the priority topics on the Commission’s agenda was an essential element in achieving co-ordination. It was also pointed out that co-operation with such bodies as the Hague Conference on Private International Law and the International Institute for the Unification of Private Law (UNIDROIT) had not been impeded in any way by the fact that special agreements specifically relating to the Commission had not been concluded with those organizations and that it was unlikely that co-operation would be hampered in the future by the absence of such agreements. Ad hoc procedures had worked well so far and the question of special agreements with other organizations should only be considered if the necessity for such agreements became apparent.

153. The observers of organizations represented at the second session indicated their willingness to collaborate with the Commission in the unification of international trade law. In this connexion the Observer of the United International Bureaux for the Protection of Intellectual Property stated that, for purposes of co-ordination, it would probably be necessary to identify the particular needs in the field which would then have to be met in appropriate arrangements, in particular if the Commission wished to rely on other organizations to provide consultant services for its own work. The Observer of the Hague Conference on Private International Law stated that the Conference was satisfied with the current practice of the Commission which allowed observers from other organizations to participate on an equal footing with delegations, but without the right to vote; this in itself considerably facilitated collaboration and co-ordination.

Decision of the Commission

154. At its 12th meeting, on 20 March 1969, Committee II approved a recommendation on the question of co-ordination for submission to the Commission. 155. The Commission, at its 39th meeting, on 21 March 1969, considered the recommendation submitted by Committee II and at its 48th meeting on 31 March 1969, taking into account the opinions expressed by Committees I and II on the co-ordination of the work of organizations in the fields of the law of the international sale of goods and of the law of international payments, respectively, adopted unanimously the following decisions:

“The Commission is of the opinion that the pragmatic approach and practice followed so far in mat-
ters of co-ordination, collaboration and working relationship have proved satisfactory and can therefore be deemed to constitute an appropriate basis for future developments in those matters.

"With particular regard to the question of co-ordination the Commission is of the opinion that co-operation and exchange of information between organizations on their work would facilitate co-ordination. To this end, it requests the Secretary-General to keep other organizations fully informed about the Commission's work and to develop with those organizations contacts on an inter-secretariat level. The Commission also requests the Secretary-General to collect information on the activities of organizations pertaining to the priority topics included in its programme of work and to make such information available to the Commission on the occasion of its annual sessions.

With particular regard to the question of collaboration and working relationship with other organizations, the Commission is of the opinion that the present methods and arrangements have produced satisfactory results and should therefore be continued. In this connexion, the Commission requests the Secretary-General to make arrangements for the attendance by observers of international organizations at the third session of the Commission, similar to those made at its second session. As to working agreements with other organizations, the Commission is of the opinion that, at this stage, no formal working agreements are necessary; the present practice of the Commission is in its view sufficiently flexible to permit the establishment and further development of working relationships and collaboration, and arrangements for specific cases, if needed, can better be made on an ad hoc basis."

CHAPTER VIII
TRAINING AND ASSISTANCE IN THE FIELD OF INTERNATIONAL TRADE LAW

156. The Commission considered the question of training and assistance in the field of international trade law at its 36th to 38th meetings on 18, 19 and 21 March 1969.

157. The Commission recalled that at its first session it had noted the special importance of increasing the opportunities for the training of experts in the field of international trade law, particularly in many of the developing countries. In considering this subject again at its second session, the Commission had before it the report of the Secretary-General (A/CN.9/27).

158. The Commission noted with satisfaction that the Advisory Committee on the United Nations Programme of Assistance on the Teaching, Study, Dissemination and Wider Appreciation of International Law had recommended at its third session, in October 1968, that an appropriate place should be given to the activities concerning international trade law within the framework of the activities conducted under the Programme. The Commission was also pleased to note that a number of United Nations organs and international organizations had undertaken training and assistance activities in the field of international trade law and that most of these organizations had expressed their willingness to co-operate with the Commission in their particular fields of specializations.

159. The Commission reviewed the helpful observations and suggestions of the Secretary-General set forth in paragraph 36 of his report as to what further action it could usefully take. The Commission also took note of the useful suggestions of several of its members, particularly the representative of the United Republic of Tanzania, who submitted a written proposal for the Commission's consideration.

Decisions of the Commission

160. At the 38th meeting of the Commission, on 21 March 1969, the representative of the United States submitted a proposal on behalf of Brazil, Ghana, the United Republic of Tanzania and the United States of America. The Commission considered the proposal at the same meeting and unanimously adopted the following decision:

"In an effort to help meet the need for developing local expertise in international trade law, particularly in the developing countries, and for intensifying and co-ordinating the existing programmes, the Commission requests the Secretary-General:

"(a) To recommend to the bodies concerned that regional seminars and training courses under the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law should continue to include topics relating to international trade law;

"(b) To recommend that some of the fellowships to be granted under the Programme of Assistance referred to in sub-paragraph (a) above be awarded to candidates having a special interest in international trade law;

"(c) To take the necessary steps to add the names and relevant particulars of experts in international trade law for inclusion in a supplement to the Register of Experts and Scholars in International Law, as described in paragraph 36 (ii) (a) of the report of the Secretary-General (A/CN.9/27);

"(d) To complete the information thus far obtained in respect of activities of international organizations in the field of training and assistance in matters of international trade law, as described in paragraph 36 (i) of the report of the Secretary-General;

"(e) To consult with the Advisory Committee on the United Nations Programme of Assistance referred to in sub-paragraph (a) above and with United Nations organs, specialized agencies and other organizations and institutions active in the field of international trade law concerning the feasibility of establishing within their programmes at selected universities or other institutions in developing countries:

"(i) Regional institutes or chairs for training in the field of international trade law;

"(ii) Seminars or courses for students, teachers,
lawyers and government officials interested or active in this field;

“(f) To report to the third session of the Commission the results of his consultations and the extent to which it has been possible to achieve the foregoing objectives and to inform the Commission of what further measures may be appropriate in the light of this experience.”

CHAPTER IX
YEARBOOK OF THE COMMISSION

161. In accordance with operative paragraph 6 (f) of General Assembly resolution 2421 (XXIII) the Commission, at its 35th meeting on 17 March 1969, and Committee II, in the course of its 9th to 11th meetings on 17 to 19 March 1969, considered the question of establishing a Yearbook of the Commission. The Commission had before it a Note by the Secretary-General (A/CN.9/28) to which were annexed preliminary outlines of the contents of yearbooks of the Commission for 1968 and 1969.

162. The Commission was of the opinion that it was desirable to establish an UNCITRAL Yearbook to make the Commission’s contributions in the field of international trade law more widely known and more readily available beyond the forum of the United Nations.

163. Some representatives considered that it would be premature to start publication of a Yearbook. Other representatives considered that the situation which arose in the case of the International Law Commission should be avoided where additional difficulties and expense resulted from delay in publishing that Commission’s first Yearbook. There was also support for the ideas that, at least in respect of the Commission’s earlier sessions, it would be enough to envisage an expanded report to the General Assembly (perhaps with the word “Yearbook” added to it) or else an amendment to the plans concerning the register of organizations to cover the work of the Commission itself.

164. The Commission considered the question of the relationship of the proposed Yearbook to the proposed registers of organizations and texts. The Commission took the view that the two projects were separate although in a sense complementary. Each should be considered on its own merits. However, the Commission was of the view that the establishment of the registers should not, for financial or other reasons, be put in jeopardy or delayed by the publication of the Yearbook.

165. As to the contents of the Yearbook, the Commission noted the draft outlines contained in the annex to document A/CN.9/28. Some representatives considered that it was a wasteful duplication (particularly in respect of the Commission’s first few sessions) merely to reproduce in extenso all the Commission’s documentation, especially summary records. Other representatives considered that the Yearbook should be designed as a complete source-book of the Commission’s work which would show in detail the Commission’s contribution to the development of international trade law and remain as a permanent record of its work.

Decision of the Commission

166. At its 11th meeting, on 19 March 1969, Committee II approved a recommendation for submission to the Commission.

167. The Commission, at its 38th and 39th meetings, on 21 March 1969, considered the recommendation of Committee II and, at its 39th meeting, unanimously adopted the following decision:

“The Commission requests the Secretary-General:
“(a) To make a study containing proposals for alternative forms of a Yearbook, taking into account relevant precedents, (International Law Commission, International Court of Justice, UNIDROIT, etc.) with the detailed financial implications of each, including a general indication of any revenue from sales which might be expected;

“(b) To complete the study before the beginning of the twenty-fourth session of the General Assembly and to make copies of the study available to the General Assembly.

“The Commission will take, at its third session, its final decisions and recommendations on the timing and content of the Yearbook in the light of the Secretary-General’s study and of the debates and decisions at the twenty-fourth session of the General Assembly.”

CHAPTER X
SUGGESTIONS RELATING TO FUTURE ACTIVITIES OF THE COMMISSION

168. In its discussion of the agenda item on the programme of work until the end of 1972 the Commission, at its 42nd and 43rd meetings, on 25 March 1969, had before it a proposal submitted by France (A/CN.9/L.7).

169. In introducing the proposal (A/CN.9/L.7), the representative of France stated that a method should be devised to bring about a change in the situation which had prevailed until now whereby international conventions, the preparation of which often took many years, tended to be ratified by only a few States. In the view of the representative of France, only a fundamental methodological change would have a chance to reduce the gap between the slow pace of international legislation and the requirements of the modern world, especially in the field of international trade.

170. The representative of France proposed therefore that States, by means of a general convention, should agree to accept the rules established by the Commission or, under its auspices, by other organizations, as a body of common law (droit commun). The rules embodied in the new “common law” would apply only to international transactions and would be binding upon States, unless they expressly declined to accept them; in that case, States would be required to indicate which rules they would apply to subject-matter covered by the “common law”. Thus, the instruments adopted by the Commission, and recommended by it to the General Assembly, would come into force without requiring ratification by States, except in cases where a State
had notified the competent international organization of its refusal to apply all or part of the provisions of such instruments.

171. If the suggested method were adopted it would result, in effect, in the elaboration of model codes governing different aspects of international trade.

172. According to the representative of France, another method might be developed along the lines of that already applied by the International Labour Organisation, whereby Governments were required to submit conventions for ratification, according to their own constitutional procedures, within a fixed period of time.

173. The Commission was unanimous in appreciating the importance and significance of the French proposal. There was, however, general agreement that a detailed study on all aspects of the proposal would be needed before a more definite opinion on the proposal could be formed.

174. Several representatives supported the idea contained in the French proposal that consideration should be given to using model laws for achieving unification. One representative recalled General Assembly resolution 2205 (XXI) which assigned to the Commission not only the task of unification, but also that of progressive harmonization of the law of international trade. The form of a model law was best suitable for the work of harmonization. Another representative recalled that the International Law Commission had also been faced with the choice between model rules and international conventions and had adopted a pragmatic approach, deciding on the value of either technique in the light of the subject at issue.

175. Some representatives expressed the view that the new method suggested by the French delegation would give rise to many difficulties, and might raise constitutional problems. In the view of one representative the idea that rules would become obligatory only after the adoption of a convention was a contradiction per se, because it was the very system of the adoption of conventions which was at issue. Another representative considered that the proposal might conflict with the provision of Article 2, paragraph 7 of the Charter of the United Nations. A few representatives stated that in view of the heavy work programme of the Commission it would be inadvisable, for the present moment, to place any further topics on the future work programme of the Commission.

176. Many representatives suggested that the French delegation should elaborate its proposal in more detail for the third session of the Commission. The representative of France expressed his willingness to submit a working paper on the subject.

177. The representative of the Soviet Union suggested that elimination of the Commission’s future programme of work. He observed that a great number of representatives had considered, at the first session of the Commission, that this question should be included in the future work programme of the Commission. In his view, the Commission would not be fulfilling its tasks if it confined itself to the consideration of the private-law problems of international trade and did not concern itself with questions of international public law which were closely related to those problems and were of major importance for the normalization of international trade. In that connexion, he proposed that at its third session the Commission should begin the preparation of a draft convention on the elimination of discrimination in laws affecting international trade and thereby carry out the task entrusted to it by the General Assembly (resolution 2205 (XXI)). The proposal was opposed by another representative on the ground that it would lead the Commission into new areas in which economic and political, and not merely legal, problems were involved.

CHAPTER XI
ORGANIZATIONAL QUESTIONS RELATING TO FUTURE WORK

A. Planning for future work

178. In its discussion of the agenda item on the programme of work until the end of 1972, the Commission, at its 41st meeting, on 24 March 1969, had before it the annotations of the Secretary-General to this item (A/CN.9/13/Add.1, item 13).

179. At the opening of the debate on the item, the representative of the Secretary-General suggested that the Commission should consider, as far as possible, its anticipated activities until the end of 1972 in order to enable the Secretariat of the Commission to prepare the budget estimates, planning estimates and calendar of meetings for that period. He noted that the Secretariat’s estimates would necessarily be based on the work programme envisaged by the Commission and could not take into consideration items which the Commission might include in its programme at future sessions.

180. It was recalled in this connexion that the General Assembly, in resolution 2205 (XXI) by which the Commission was established, had expressed its conviction that “the process of harmonization and unification of the law of international trade should be substantially co-ordinated, systematized and accelerated and that a broader participation should be secured in furthering progress in this area”, and that the United Nations should “play a more active role towards reducing or removing legal obstacles to the flow of international trade”. The Commission agreed that in order to implement the mandate entrusted to it by the General Assembly, it was desirable that there should be the widest possible participation by members of the Commission also in the preparatory work to be done by inter-sessional sub-committees, working groups or special rapporteurs, which the Commission might decide to establish or appoint. It was also considered desirable that provisions should be made, where necessary, to obtain the services of consultants or organizations with special expertise in technical matters dealt with by the Commission. The Commission agreed that this would be the normal pattern of work during the coming years.

181. The Commission also agreed that it was necessary that the Secretariat should be adequately staffed to cope with the increased workload involved in servicing the Commission.

182. The Commission further considered that it could establish a detailed programme of work for the
coming year only and agreed that the Secretariat should prepare the necessary budget and planning estimates for subsequent years in order to enable the Commission to carry out its work in the light of the considerations set forth in paragraph 180 above.

B. Establishment of working groups

183. The Commission in the course of its second session established the following three inter-sessional subsidiary bodies:

1. Working Group on uniform rules governing the international sale of goods and the law applicable thereto (see paragraph 38 above);

2. Working Group on time-limits and limitations (prescription) in the international sale of goods (see paragraph 46 above); and

3. Working Group on International Legislation on Shipping (see paragraph 133 above).

184. At its 45th meeting, on 26 March 1969, the Commission decided that the term “Working Group” would be used for the present for all inter-sessional bodies set up at its second session on the understanding that the adoption of this term would in no way prevent the organ from having summary records of its discussions and other services necessary for its work. This decision was taken after receiving an opinion from the Legal Counsel of the United Nations that it is the decision of a particular organ and not its name which determines whether summary records would be issued and that full assurances could therefore be given that the question of summary records and other services would not be prejudiced if the subsidiary body was called a working group rather than a committee or sub-committee.

C. Summary records of subsidiary bodies

185. During the course of the second session a request was made for summary records for the two sessional Committees of the Whole which the Commission established at its 27th meeting, on 4 March 1969, in order that the discussion of legal issues and texts under consideration in the Committees might be available to assist the Commission in its future work. As the establishment of Committees of the Whole and the request for summary records had not been foreseen, it was not practicable in the time available to provide summary records for these committees. Special arrangements were, however, made in order to afford as complete a record as possible of the discussion of certain items in the committees. The representative of the Secretary-General informed the Commission that these special arrangements had been made only for the present session and could not be made for future sessional or inter-sessional committees or working groups.

186. On 27 March 1969 during its 46th meeting the Commission’s attention was drawn to paragraph 11 of General Assembly resolution 2478 (XXIII) of 21 December 1968, by which the Assembly requested all organs other than those listed in paragraph 35 of the report of the Committee on Conferences to consider, in response to General Assembly resolution 2292 (XXII) of 8 December 1967, dispensing with summary records for their meetings, and to report to their parent organs as appropriate, so as to enable them to make their decisions available to the Committee on Conferences in time for the latter to present its relevant conclusions to the Assembly at its twenty-fourth session.

187. It was noted that the Commission was among those organs listed in paragraph 35 of the report of the Committee on Conferences as a body which should be provided with summary records. There was no decision, however, with respect to its subsidiary bodies. Having noted the statement of the Legal Counsel referred to in paragraph 184 above, the Commission decided not to dispense with summary records for its subsidiary bodies, but to leave it to these bodies to decide if summary records were needed in the circumstances of each case.

D. Date of the third session

188. The Commission decided, at its 46th plenary meeting, on 27 March 1969, that its third session, to be held in New York, should be convened from 6 to 30 April 1970 and, in the case of an extension, should not continue beyond 2 May 1970.

CHAPTER XII
RESOLUTIONS AND OTHER DECISIONS ADOPTED BY THE COMMISSION AT ITS SECOND SESSION

[These resolutions and decisions appear above in the body of the report and consequently are not reproduced here.]

ANNEX I
Summary of the comments made during the second session on the 1964 Hague Convention on the International Sale of Goods

[Annex not reproduced; see summary records of the second session of the Commission (A/CN.9/SR.26-49).]

ANNEX II
Summary of the comments made during the second session on the 1955 Hague Convention on the Law Applicable to the International Sale of Goods

[Annex not reproduced; see summary records of the second session of the Commission (A/CN.9/SR.26-49).]

ANNEX III
Representatives of members of the Commission

Argentina

Representative
Sr. Gervasio Ramón Carlos COLOMBRES, Professeur à la Faculté de Droit Université de Buenos Aires.

* The members of the Commission are: Argentina, Australia, Belgium, Brazil, Chile, Colombia, Congo (Democratic Republic of), Czechoslovakia, France, Ghana, Hungary, India, Iran, Italy, Japan, Kenya, Mexico, Nigeria, Norway, Romania, Spain, Syria, Thailand, Tunisia, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America.

Alternate
Mr. Luis Reyna Corvalán, Attaché, Mission Permanente de la République Argentine auprès des Nations Unies, Genève.

Australia

Representative
Mr. Anthony Mason, Q.C., Solicitor-General for the Commonwealth of Australia.

Alternates
Mr. Kevin William Ryan, Senior Trade Commissioner, Permanent Mission of Australia, Geneva;
Mr. K. de Rossignol, Trade Commissioner, Australian Embassy Paris.

Advisor
Mr. P. Paterson, Third Secretary, Australian Embassy, Vienna.

Belgium

Representative
Monsieur le Ministre Albert Lilar, Professeur à la Faculté de Droit et à la Faculté des Sciences économiques et sociales à l'Université de Bruxelles.

Alternates
Mr. P. Jenard, Directeur d'administration au Ministère des Affaires étrangères et au commerce extérieur; Madame Suzanne Oszinsky, Premier Conseiller, Ministère de la Justice.

Advisors
Mr. Leonard, Magistrat délégué au Ministère de la Justice; Mr. Debrelle, Secrétaire d'administration, Ministère de la Justice.

Brazil

Representative
Mr. Nehemias Gueiros, Professeur de droit civil à la Faculté de Droit, Recife, Président de la Fédération Interaméricaine des Avocats (Washington D.C.).

Chile

Representative
Mr. Eugenio Cornejo Fuller, Decano de la Facultad de Ciencias Jurídicas y Sociales de la Universidad Católica de Valparaíso.

Alternate
Mr. Carlos de Costa-Nora, Segundo Secretario de la Misión Permanente en Ginebra.

Colombia

Congo (Democratic Republic of)

Czechoslovakia

Representative
Mr. Rudolf Bystricky, Faculté de droit, université Charles, Prague.

Alternate
Mr. Luděk Kopac, Conseiller juridique, Ministère de Commerce étrangère, Prague.

Advisors
Mr. Zdenek Kucer, Professeur agrégé, Université Charles, Prague;
Mr. Jiří Pleticha, Second Secretary, Ministry of Foreign Affairs.

France

Representative
Mr. René David, Professeur à la Faculté de droit et des Sciences économiques de Paris.

Alternate b
Mr. Jacques Baudoin, Sous-directeur des Affaires civiles et du Sceau au Ministère de la Justice.

Advisors
Mr. Jacques Lemontey, Magistrat au Bureau du Droit européen et international, Ministère de la Justice;
Mr. J. P. Plantard, Magistrat au Bureau du Droit européen et international, Ministère de la Justice;
Mr. Philippe Petit, Secrétaire des Affaires étrangères, Service Juridique, Ministère des Affaires étrangères.

Ghana

Representative
Mr. Emmanuel Kodjie Dadzie, Ambassador, Ministry of External Affairs.

Alternate
Mr. Uriel Valentine Campbell, Solicitor General, Ghana.

Advisors
Mr. W. W. K. Vanderpuye, Director, Legal and Consular Division, Ministry of External Affairs;
Mr. A. K. Duah, First Secretary, Permanent Mission of Ghana to the United Nations, Geneva.

Hungary

Representative
Mr. László Recsei, Ambassador, Professor of Law, Department of Economics, University of Budapest.

Alternate
Mr. Ferenc Kreskay, Doyen, Faculté de Commerce, Université des sciences économiques, Budapest.

Advisors
Mr. Iván Meznérics, Chef, Section juridique, Banque Nationale Hongroise, Budapest;
Mr. Ivan Szasz, Chef, Département juridique, Ministère de commerce extérieur, Budapest.

India

Representative
Mr. Nagendra Singh, Secretary to the President of India.

Alternates
Mr. N. Krishna, Permanent Representative to United Nations Office, Geneva;
Mr. Jagota, Director, Legal and Treaties Division, Ministry of External Affairs.

Iran

Representative
Mr. Mansour Sagahi, Professeur de droit commercial à la Faculté de Droit de l'Université de Téhéran.

b Representative of France from 3 to 9 March and 17 to 23 March during the absence of Mr. René David.
ITALY

Representative
Mr. Giorgio BERNINI, Professeur ordinaire de l'Université de Padoue, Directeur de l'Institut d'Etudes anglo-américaines.

Advisers
Mr. Andrea G. MOCHI ONORI DI SALUZZO, Contentieux Diplomatique, Ministère des Affaires étrangères;
Mr. Piero ASLAN, Mission Permanente de l'Italie auprès des Nations Unies, Genève.

JAPAN

Representative
Mr. Shinichiro MICHIDA, Professor of Law, University of Kyoto.

KENYA

Representative
Mr. Raphael Joseph OMBERE, Assistant Legal Secretary, Ministry of Foreign Affairs.

MEXICO

Representative
Mr. Jorge BARRERA GRAF, Professor of Law, University of Mexico.

NIGERIA


NORWAY

Representative
Mr. Stein RØGNIHJEN, Director-General, Ministry of Justice, Oslo.

Alternate

Special Adviser
Mr. Heikki Juhani IMMONEN, Counsellor of Legislation, Ministry of Justice, Helsinki.

ROMANIA

Representative
Mr. Ion NESTOR, Chef du Secteur de droit international privé, Institut de Recherches juridiques, Académie de la République Socialiste de Roumanie.

Advisers
Mr. Ion BACALU, Conseiller juridique, Ministère du Commerce extérieur;
Mr. Gheorghe BACHI, Conseiller juridique, Banque pour le Commerce extérieur;
Mr. Nicolae DINU, Second Secretary, Permanent Mission of Romania to the United Nations, Geneva.

SPAIN

Representative
Mr. Joaquin GARRIGUES, Profesor de Derecho Mercantil, Universidad de Madrid.

Alternate
Mr. Raimundo PEREZ-HERNANDEZ, Ministro Plenipotenciario, Ministerio de asuntos exteriores;
Mr. Santiago MARTINEZ-CARO, Directeur, Conseil Juridique International, Ministère des Affaires étrangères;
Mr. Roberto BERMUDEZ, Secretario de Embajada.

SYRIA

Representative
Mr. Mowaffak ALLAF, Permanent Representative of the United Nations, Geneva.

Alternate
Mile Siba NASSER, Attaché, Mission Permanente de la République Arabe Syrienne, Genève;
Mr. Loufi EL-ATRACHE, Attaché, Mission Permanente de la République Arabe Syrienne, Genève.

THAILAND


TUNISIA

Representative
Mr. Abdelmajid BEN MESSAOUDA, Chef, Service Juridique, Secrétariat d'Etat aux Affaires étrangères, Tunis.

Alternate

UNION OF SOVIET SOCIALIST REPUBLICS

Representative
Mr. G. S. BURGOCHEV, Chief, Treaty and Law Administration of the USSR, Ministry of Foreign Trade.

Alternate
Mr. Michail ROSENBERG, Associate Professor, All-Union Academy of Foreign Trade;
Mr. P. H. EVSEEV, Counsellor of the Treaty and Legal Department, Ministry of Foreign Affairs;
Mrs. H. A. KAZAKOVA, Senior Consultant, Bank of Foreign Trade;
Mr. Albert V. MELNIKOV, First Secretary, Permanent Mission of the Union of Socialist Republics to the United Nations, Geneva.

UNITED ARAB REPUBLIC

Representative
Mr. Mohsen CHAFIK, Professor of Trade Law, Cairo University.

Alternate
Mr. Esmat HAMMAM, Counsellor, Ministry of Foreign Affairs, Cairo.

Advisor
Mr. Hassan S. ABDEL-MAAL, First Secretary, Permanent Mission of the United Arab Republic to the United Nations, Geneva.

UNITED KINGDOM

Representative
Mr. Anthony Gordon GUEST, Professor of English Law, University of London.

Alternate
Mr. Michael John WARE, Senior Legal Assistant, Board of Trade;
Mr. Philip James ALLOTT, Assistant Legal Adviser, Foreign and Commonwealth Office, London;
Mr. Lawrence GRETTON, Legal Assistant, Board of Trade.

UNITED REPUBLIC OF TANZANIA

Representative
Mr. Sosthenes Thomas MALTITI, Senior State Attorney, Attorney General's Chambers.
Alternate
Mr. V. N. Carvalho, Legal Counsel, National Development Corporation.

UNITED STATES OF AMERICA
Representatives
Mr. Seymour J. Rubin, Attorney at Law, Adjunct Professor of Law, Georgetown University Law Center, Washington D.C.;
Mr. John Honold, Professor of Law, University of Pennsylvania.
Alternate

ANNEX IV
Secretariat of the Commission
Mr. Blaine Sloan, Representative of the Secretary-General, Director of the General Legal Division, Office of Legal Affairs;
Mr. Paolo Contin, Secretary of the Commission, Chief, International Trade Law Branch;
Mr. Peter Katona, Assistant Secretary of the Commission, Senior Legal Officer;
Mr. P. Ratou, Legal Affairs Liaison Officer, Geneva;
Mr. Willem Van, Assistant Secretary of the Commission, Senior Legal Officer;
Mrs. Jelena Vitus, Assistant Secretary of the Commission, Legal Officer.

ANNEX V
Observers
A. UNITED NATIONS ORGANS
Economic Commission for Europe
Mr. Henri Cornil, General Economic Research Division.
United Nations Conference on Trade and Development
Mr. W. W. Malinowski, Director, Division for Invisibles;
Mr. Karel V. Svec, Deputy Director, Trade Policies Division;
Mr. Samuel Okumurido, Senior Legal Officer.
United Nations Institute for Training and Research
Mr. Ahmed Boumendjel, Officer-in-Charge of UNITAR at Geneva.

B. SPECIALIZED AGENCIES
Food and Agriculture Organization of the United Nations
Mr. Lamartine Yates, Regional Representative, Europe.
Inter-Governmental Maritime Consultative Organization
Mr. Thomas A. Mensah, Head of the Legal Division;
Viscount Donrossil, External Relations Officer.
International Monetary Fund
Mr. Robert Effros, Counsellor for Legislation in the Legal Department.

C. INTERGOVERNMENTAL ORGANIZATIONS
Commission des Communautés Européennes
Mr. Houck, Chef de Division, Direction générale du Marché intérieur et du Rapprochement des Législations;
Mr. Thierry Cathala, Administrateur Principal, Direction générale du Marché intérieur et du Rapprochement des Legislations.
Council for Mutual Economic Assistance
Mr. Michael Koudriashov, Chief, Legal Office;
Mr. Peter Grab, Expert of the Foreign Trade Department.
Council of Europe
Mr. R. Müller, Head of Service, Directorate of Legal Affairs,
Council of European Communities
Mr. Daniel Vigne, Conseiller au Service Juridique;
Mr. Antonio Sacchetini, Conseiller adjoint, Service Juridique.
Hague Conference on Private International Law
Mr. M. H. Van Hoostraten, Secretary-General.
Inter-American Juridical Committee
Mr. José Joaquín Caicedo Castilla, Acting Chairman.
International Institute for the Unification of Private Law
Mr. Mario Matteucci, Secretary-General;
Professor Otto Riese, Chairman, International Sales Committee.
Organization of American States
Mr. Raúl C. Migue, European Representative;
Mr. Georges D. Landau, Representative of the Secretary-General.
United International Bureaux for the Protection of Intellectual Property
Mr. Roger Harben, Assistant, External Relations Service;
Mr. Ibrahim Taham, Assistant, External Relations Service.

D. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS
International Chamber of Commerce
Mr. Bernard S. Wreble, Président, Commission de Technique et Pratiques Bancaires;
Mr. Lars A. E. Jhier, Rapporteur, Commission des Pratiques Commerciales Internationales.
International Chamber of Shipping
Mr. S. A. Cotton, Secretary of the Maritime Committee.
International Law Association
Mr. Michael Brandon, Representative to the United Nations.
International Bar Association
Mr. Michael Brandon, Representative to the United Nations.

ANNEX VI
Resolution 2305 (XXI) adopted by the General Assembly on 17 December 1966
[Annex not reproduced; see part one, section I, E above.]

ANNEX VII
List of documents of the second session
[Annex not reproduced; see check list of UNCTRAL documents at the end of this volume.]
B. Comments and action with respect to the report of the Commission


   F. PROGRESSIVE DEVELOPMENT OF THE LAW OF INTERNATIONAL TRADE

   (Agenda item 16)\(^1\)

   186. The document before the Board in connexion with this item was the report of the United Nations Commission on International Trade Law on its second session.\(^2\) As explained in a note by the UNCTAD secretariat (TD/B/268), the report was submitted to the Board in conformity with paragraph 10 of section II of General Assembly resolution 2205 (XXI) of 17 December 1966.

   187. In this connexion, special reference was made to the desire expressed by the United Nations Commission on International Trade Law in its resolution concerning international legislation on shipping, for the strengthening of co-operation with UNCTAD in this field, and some delegations expressed satisfaction with the establishment of an UNCTAD/Office of Legal Affairs Joint Shipping Legislation Unit. The representative of a developing country expressed the hope that an early start would be made in the drafting of international legislation on shipping.

   Action by the Board

   188. At the Board's 27th meeting, on 12 September 1969, it was agreed to take note with appreciation of the report of the United Nations Commission on International Trade Law on its second session and of its decision to include international legislation on shipping among the priority items in its programme of work. It was recommended that there should be continued close co-operation between UNCTAD and the Commission in the field of international legislation on shipping.

2. Report of the Sixth Committee*

   CONTENTS

   I. INTRODUCTION ................................................................. 1–5
   II. PROPOSALS ....................................................................... 6–7
   III. DEBATE .......................................................................... 8–33
       A. The role of the United Nations Commission on International Trade Law in general 9
       B. The working methods of the Commission .............................. 10–12
       C. Programme of work of the Commission ............................... 13–15
       D. International sale of goods ............................................... 16–19
       E. International payments ..................................................... 20–21
       F. International commercial arbitration .................................. 22–23
       G. International legislation on shipping ................................. 24–27
       H. Register of organizations and register of texts .................... 28–29
       I. Establishment of a yearbook of the Commission .................. 30–31
       J. Training and assistance in the field of international trade law 32–33
   IV. VOTING ........................................................................... 34–37

   RECOMMENDATION OF THE SIXTH COMMITTEE ......................... 126

I. INTRODUCTION

1. At its 1758th plenary meeting, on 20 September 1969, the General Assembly included as item 90 of the agenda of its twenty-fourth session, and allocated to the Sixth Committee, the item entitled "Report of the United Nations Commission on International Trade Law on the work of its second session".

2. The Sixth Committee considered this item at its 1111th to 1118th meetings, held from 1 to 7 October 1969 and at its 1120th and 1121st meetings, held on 9 and 10 October 1969.

3. At the 1111th meeting, on 1 October 1969, Mr. László Récsei (Hungary), Chairman of the United Nations Commission on International Trade Law at

its second session, introduced the Commission’s report on the work of that session (A/7618).  

4. At the 1121st meeting, on 10 October 1969, the Rapporteur of the Sixth Committee raised the question whether the Committee wished to include in its report to the General Assembly a summary of views expressed during the debate on agenda item 90. After referring to paragraph (f) of the annex to General Assembly resolution 2292 (XXII) of 8 December 1967, the Rapporteur informed the Committee of the financial implications of the question. At the same meeting, the Committee decided that, in view of the nature of the subject-matter, the report on agenda item 90 should include a summary of the representative trends of opinion and not of the individual views of all delegations.

5. The report of the Commission on the work of its second session, which was before the Sixth Committee, is divided into twelve chapters as follows:

I. Organization of the session;
II. International sale of goods;
III. International payments;
IV. International commercial arbitration;
V. International legislation on shipping;
VI. A. Register of organizations and register of texts;
B. Bibliography;
VII. Co-ordination of the work of organizations in the field of international trade law; working relationship and collaboration with other bodies;
VIII. Training and assistance in the field of international trade law;
IX. Yearbook of the Commission;
X. Suggestions relating to future activities of the Commission;
XI. Organizational questions relating to future work;
XII. Resolutions and other decisions adopted by the Commission at its second session.

II. PROPOSALS

6. At the 1120th meeting, on 9 October 1969, the representative of India introduced a draft resolution sponsored by Australia, Brazil, Cameroon, Congo (Democratic Republic of), Ghana, India, Japan, Kenya, New Zealand, Nigeria, Romania, Spain and United Republic of Tanzania (A/C.6/L.748 and Add.1 and 2), which reads as follows:

“The General Assembly,

“Having considered the report of the United Nations Commission on International Trade Law on the work of its second session (A/7618),

“Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the Commission

and defined its object and terms of reference, and its resolution 2421 (XXIII) on the report of the Commission on the work of its first session,

“Noting the comments by the Trade and Development Board at its ninth session expressing its appreciation of the report of the United Nations Commission on International Trade Law (see A/C.6/L.744),

“Taking into consideration the report of the Secretary-General concerning the establishment of a Yearbook of the United Nations Commission on International Trade Law and the financial implications of alternative proposals for such a yearbook,”


“2. Endorses the inclusion by the Commission, on the basis indicated in its report, of international legislation on shipping among the priority topics in its work programme;

“3. Notes with appreciation the progress made in the implementation of the Commission’s programme of work, including the establishment of working groups on uniform rules governing the international sale of goods and the law applicable thereto, on timelines and limitations (prescription) in the field of the international sale of goods, and on international legislation on shipping;

“4. Takes note of the view expressed by the United Nations Commission on International Trade Law in its report that, in order to implement the mandate entrusted to the Commission by the General Assembly, it is desirable that there be the widest possible participation by the members of the Commission in the preparatory work to be done by working groups or Special Rapporteurs;

“5. Endorses the Commission’s desire, where necessary, to obtain the services of consultants or organizations with special expertise in technical matters dealt with by the Commission;

“6. Emphasizes the need for full co-operation with the Commission in the performance of its task to promote the progressive harmonization and unification of the law of international trade;

“7. Approves in principle the establishment of a Yearbook of the United Nations Commission on International Trade Law which would make the Commission’s work more widely known and readily available, and requests the Commission to consider at its third session the timing and content of the Yearbook, in the light of the report of the Secretary-General and of the discussions at the twenty-fourth session of the General Assembly;

“8. Authorizes the Secretary-General to establish the Yearbook referred to in paragraph 7 above in accordance with the decisions and recommendations to be adopted by the Commission at its third session;

1 This presentation was pursuant to a decision taken by the Sixth Committee at its 1096th meeting, on 13 December 1968. See Official Records of the General Assembly, Twenty-third Session, Annexes, agenda item 88, document A/7408, para. 3.

2 A/C.6.9/32.

3 Ibid.
A. The role of the United Nations Commission on International Trade Law in general

9. Most representatives expressed satisfaction at the work of the Commission's second session and congratulated the Commission on the practical and businesslike way in which it had set about its substantive work. Several representatives called attention to the field of competence conferred on the Commission by General Assembly resolution 2205 (XXI), and expressed the opinion that limitations should not be imposed on the Commission's work which would be contrary to its terms of reference. These representatives observed that the Commission, as an organ representing the international community, should take positive steps to reduce discrepancies between the needs of present-day international trade and the often obsolete legal institutions which sought to regulate it; the Commission should, therefore, go beyond the tasks of providing information on existing legislation of an international character, and of merely co-ordinating the work of other organizations in the field of international trade law. Representatives of developing countries expressed the hope that the Commission would be instrumental in establishing equitable conditions for international trade by eliminating from existing international instruments provisions which failed to give fair recognition to their interests. Consequently, the Commission should not limit itself to the compilation of customs and norms of international trade which would necessarily imply the maintenance of an unsatisfactory status quo. Other representatives took the view that the primary responsibility of the Commission was to co-ordinate the activities of other organizations, to review existing instruments where necessary and to disseminate information, rather than to undertake the preparation of new legal instruments. They emphasized the need for such co-ordination and the unique contribution that the Commission could make in drawing on the specialized expertise of existing agencies and in developing means to secure the wider acceptance of suitable conventions.

B. The working methods of the Commission

10. Several representatives stressed the importance of careful preparatory work so that the results could be generally accepted and successfully implemented, rather than the mere production of rapid results. Many representatives were of the opinion that the establishment by the Commission of inter-sessional working groups had been a wise and appropriate decision. The difficulties involved in the unification and harmonization of international trade law were considerable; therefore a sustained effort which would enable the Commission to advance its work between its yearly sessions was required. On the other hand, caution was expressed about the possible proliferation and permanence of inter-sessional working groups, lest the cost exceed the benefits from such work.

11. It was suggested by some representatives that the Commission should secure wider participation and collaboration in its work than could be provided by those States which were members of the Commission, that it should, when necessary, obtain the services of
consultants to assist it in its preparatory work, and that it should expand its co-operation with organizations concerned with international trade law by including economic and commercial circles engaged in trade law and interested in its work, so that the studies and the work undertaken would reflect the needs that were actually experienced in international trade.

12. Several representatives noted that the success of the Commission's work depended on the selection by Member States of skilled experts for the sessions of the Commission and the meetings of its working groups. The view was, however, expressed that this requirement would be difficult to meet if such sessions and meetings were permitted to last too long.

C. Programme of work of the Commission

13. Most representatives who expressed their views on the programme of work of the Commission observed that the programme entailed a heavy workload for the Commission and its secretariat and therefore should not be further expanded for the time being. The opinion was also expressed that, in view of this workload, the International Trade Law Branch should develop as a unified operation in close relationship with the rest of the Office of Legal Affairs.

14. Some representatives declared that the Commission should not confine itself to harmonizing and unifying private law norms in the international sphere, but should also concern itself with the removal of discriminatory rules which adversely affected international trade. Other representatives held the view that questions of public international law and questions affecting trade policy could best be dealt with in organs other than the Commission, and that the Commission should accordingly confine its attention to the norms governing commercial relationships of a private law nature and should avoid considering political questions.

15. One representative suggested that, in accordance with paragraph 8 (d) of section II of General Assembly resolution 2205 (XXI), the Commission should consider by what practical means it could ensure the uniform interpretation and application of international instruments, particularly in the field of international shipping.

D. International sale of goods

16. Various trends of opinion were expressed regarding the unification of substantive rules governing the international sale of goods.

17. Some representatives expressed the opinion that the Hague Conventions of 1964 relating to a Uniform Law on the International Sale of Goods and a Uniform Law on the Formation of Contracts for the International Sale of Goods, which were the outcome of over thirty years of work, should constitute the basis for further work by the Commission in the field, that it would not be possible to form a considered opinion of the effectiveness of these Conventions until they had been put to the test by a sufficiently large number of States, and that, consequently, no changes should be proposed which might impede their ratification. The Convention, it was further observed, were modern, practical legal instruments and represented the established practice of merchants of both the common law and civil law systems, modified to the extent necessary to achieve a single, harmonious and unified system. Under this view, repudiation of the Conventions would amount to a repudiation of the established law of both systems concerning not only international, but also internal commercial dealings. These representatives also stressed that the Hague Conventions were not designed to favour the interests of either developing or developed countries, but to establish a proper balance between sellers and buyers.

18. Other representatives questioned the need for the Commission to base its work on the rules of the Hague Conventions of 1964. These representatives noted that the Conventions had emerged from a diplomatic conference attended by only twenty-eight States, and that these States were not representative of the present membership of the United Nations. Attention was also directed to inconsistencies between the rules on choice of law in the Hague Convention of 1955 on the Law Applicable to the International Sale of Goods and provisions governing the applicability of the Hague Conventions of 1964. It was suggested that the Hague Conventions of 1964, as well as the Hague Convention of 1955, could not form the basis of a unified law and that it would accordingly be advisable to formulate a new instrument which would take full account of the interests of different legal, social and economic systems, including those of both the developed and developing countries.

19. However, most representatives who spoke on the question were agreed that the Commission had acted wisely in establishing a Working Group to consider closely by what means and procedures the unification of the rules governing the international sale of goods could best be promoted, and that it was appropriate and desirable for the Commission to examine the Hague Conventions of 1955 and 1964 in order to determine what modifications might be needed to render them more widely acceptable. It was observed that consideration should be given to uniting the two conventions in a single text which might be drafted in simpler language comprehensible to both traders and lawyers.

E. International payments

20. Many representatives welcomed the decision of the Commission to investigate the possibility of preparing rules applicable to a new form of negotiable instruments for optional use in international transactions. These representatives commended the Commission on the procedure it was following, namely, of assessing the existing legal and practical difficulties in the use internationally of negotiable instruments by means of a detailed questionnaire addressed to Governments and to competent banking and trade institutions. In this connexion, the view was expressed that, where appropriate, a similar approach should be employed by the Commission in its preparatory work on other priority topics. Some representatives pointed out
that new economic and legal problems had arisen which were not covered by the Geneva Conventions of 1930 and 1931 providing a Uniform Law on Cheques, Bills of Exchange and Promissory Notes, and that unification of domestic legislation in this area would not be feasible. Therefore the best way of securing uniformity was the Commission's project, which was confined to the consideration of a new negotiable instrument in international transactions; any other approach would lead to insurmountable difficulties, at least in some countries.

21. Several representatives referred favourably to the Commission's decision to draw the attention of Governments to the contribution which employment of the "Uniform Customs and Practice for Documentary Credits", drawn up by the International Chamber of Commerce ("the Code"), could make to facilitating international trade. Some representatives also commented the decision to ask Governments to inform the International Chamber of Commerce concerning any difficulties arising in connexion with the use of the Code.

F. International commercial arbitration

22. There was general endorsement of the opinion expressed by the Commission that the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 should be adhered to by the largest possible number of States. One representative declared that the Commission should also encourage States to accede to the European Convention on International Commercial Arbitration of 1961, provided that accession to that Convention was not limited to States members of the Economic Commission for Europe.

23. Several representatives expressed agreement with the conclusion reached by the Commission that, with regard to international commercial arbitration, the best course, for the time being, was for the Commission to concern itself with problems of the international interpretation and application of existing conventions and welcomed, in this respect, the Commission's decision to appoint Mr. Ion Nestor (Romania) as Special Rapporteur on the most important problems arising in that connexion.

G. International legislation on shipping

24. Most representatives who commented on the decision of the Commission to include international legislation on shipping among the priority topics in its programme of work, recognized that the Commission was competent to consider such legislation and to decide on topics and methods of work in that connexion. Many drew attention, however, to the need for the Commission to take account of the work of other organizations in the field, so as to avoid wasteful duplication or unnecessary expenditure. It was also observed that collaboration in this particular field had been helped by the creation of the Joint Shipping Legislation Unit of the United Nations Office of Legal Affairs and the secretariat of the United Nations Conference on Trade and Development.

25. Some representatives, while accepting the competence of the Commission in the field of international legislation on shipping, doubted the wisdom of its decision to include the subject in its working programme at the present stage. These representatives took the view that it would be preferable for the Commission not to commence considering the substance of the question until the other international organizations concerned had considered its economic and other aspects. Those holding this view believed that the Commission should, for the time being, confine its task to that of co-ordination.

26. Representatives of developing countries stressed that the Commission's work in this field was of importance for the economy of these countries and expressed the hope that their countries would be equitably represented in the bodies responsible for drafting new legislation or modifying existing legislation. These representatives stated that present-day legislation in the field reflected, in many respects, an earlier economic phase of society, as well as attitudes and practices which seemed unduly to favour ship-owners at the expense of shippers. They also observed that the developing countries were particularly interested in legislation on freight rates, charter parties, standard clauses in bills of lading, and the limitations on the ship-owner's liability resulting from exemption clauses. Some delegations expressed the opinion that international shipping legislation was a priority topic that provided the Commission with the best opportunity of contributing to a change in the status quo and the creation of more just and equitable conditions for the developing nations in the field of international trade.

27. One representative suggested that, in dealing with international legislation on shipping, the Commission should take account of the Treaties of Montevideo of 1889, as revised in 1940 and 1944, which had greatly benefited private international law.

H. Register of organizations and register of texts

28. Several representatives commended the Commission for the work which was at present being carried out in regard to the establishment of a register of organizations and a register of texts, and expressed confidence that the measures taken by the Commission to publish the registers in stages and make arrangements for their sale would reduce their cost.

29. Representatives of developing countries declared that the establishment of the registers was of special importance to their countries, in that the registers permitted access to information and documentation on international trade law which was not otherwise readily available. It was further stated that, in view of the potential value of the registers in countries which often lacked highly trained personnel and did not have the extensive archives of the developed countries, the cost of establishing the registers was fully justified.

1. Establishment of a yearbook of the Commission

30. There was general support among representatives in the Sixth Committee for the view that a yearbook of the United Nations Commission on Inter-
national Trade Law would make the Commission's work more widely known and generally available, and that the publication of the yearbook was in principle desirable.

31. Some representatives, however, expressed hesitation as to the timeliness of publishing a yearbook, since the results of the Commission's work had not yet become visible. These representatives doubted whether the advantage of having a yearbook would, for the time being, justify its cost. The view was expressed that the establishment of a yearbook was not necessarily the best way of attaining the ends which the yearbook purported to achieve, and that other means — such as the annual report of the Commission possibly with certain modifications, and access to available documentation — could provide acceptable alternatives. These representatives expressed the hope that the decision could be postponed until the next session of the General Assembly, when the Assembly would be in possession of the final views of the Commission. However, a majority of the representatives who spoke on the subject supported the publication of the yearbook without unnecessary delay, while expressing their preference for an approach along the lines of alternative A as set forth in the report of the Secretary-General.¹ One representative observed that alternative A did not enumerate all relevant documents necessary to become fully acquainted with the work of the Commission, such as those dealing with time-limits and limitations.

J. Training and assistance in the field of international trade law

32. Many representatives stressed that it was important for the Commission to promote the development of local expertise in the field of international trade law, particularly in the developing countries, and welcomed the decision of the Commission to encourage intensification of the existing programmes.

33. It was suggested that the Commission should contemplate organizing a seminar on international trade law similar to that in international public law held in connexion with the sessions of the International Law Commission at Geneva. It was also suggested that the Commission should consider providing developing countries with training facilities in developed countries, particularly in the fields of banking, insurance and transport.

IV. Voting

34. At the 1120th meeting, on 9 October 1969, the Sixth Committee, at the request of the representative of Afghanistan, took a roll-call vote on the proposed amendment to paragraph 10 of the draft resolution (A/C.6/L.748 and Add.1 and 2), referred to in paragraph 7 above. The amendment was adopted by 57 votes to 4, with 25 abstentions. The voting was as follows:

In favour: Afghanistan, Algeria, Argentina, Austria, Bolivia, Burma, Chile, Colombia, Congo (Democratic Republic of), Cuba, Cyprus, Dahomey, Ecuador, Ethiopia, Guatemala, Haiti, Indonesia, Iran, Iraq, Ireland, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mexico, Mongolia, Morocco, Netherlands, Niger, Nigeria, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Syria, Thailand, Togo, Trinidad and Tobago, Turkey, Uganda, United Arab Republic, Uruguay, Venezuela, Yugoslavia, Zambia.

Against: Australia, New Zealand, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstaining: Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, Denmark, Finland, France, Ghana, Greece, Hungary, India, Israel, Italy, Japan, Luxembourg, Norway, Pakistan, South Africa, Spain, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania.

35. At the 1121st meeting, on 10 October 1969, the representative of Israel declared that, subsequent to the above vote, he received instructions from his Government which would have enabled him to vote in favour of the amendment.

36. At the 1120th meeting, on 9 October 1969, at the request of the representative of Liberia, a separate vote was taken on paragraph 8 of the draft resolution. Paragraph 8 was adopted by 53 votes to 15, with 14 abstentions.

37. The draft resolution as a whole, as amended, was adopted by 84 votes to none, with 2 abstentions. Explanations of vote were given by the representatives of Afghanistan, Australia, Belgium, Canada, Congo (Democratic Republic of), France, Ghana, India, Israel, Liberia, Peru, Philippines, Spain, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America.

Recommendation of the Sixth Committee

[The text of the recommendation, not included here, contained a draft resolution which was adopted by the General Assembly and appears in sub-section 3 below.]
3. General Assembly resolution 2502 (XXIV) of 12 November 1969

2502 (XXIV) REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

The General Assembly,

Having considered the report of the United Nations Commission on International Trade Law on the work of its session,¹

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law and defined its object and terms of reference, and its resolution 2421 (XXIII) of 18 December 1968 on the report of the Commission on the work of its first session,

Noting the comments made by the Trade and Development Board at its ninth session² expressing its appreciation of the report of the United Nations Commission in International Trade Law,

Taking into consideration the report of the Secretary-General concerning the establishment of a Yearbook of the United Nations Commission on International Trade Law and the financial implications of alternative proposals for such a Yearbook,³


2. Endorses the inclusion by the United Nations Commission on International Trade Law on the basis indicated in its report,⁴ of international legislation on shipping among the priority topics in its programme of work;

3. Notes with appreciation the progress made in the implementation of the programme of work of the United Nations Commission on International Trade Law, including the establishment of working groups on uniform rules governing the international sale of goods and the law applicable thereto, on time-limits and limitations (prescription) in the field of the international sale of goods and on international legislation on shipping;

4. Takes note of the view expressed by the United Nations Commission on International Trade Law in its report that, in order to implement the mandate entrusted to the Commission by the General Assembly, it is desirable that there be the widest possible participation by the members of the Commission in the preparatory work to be done by working groups or special rapporteurs;

5. Endorses the desire of the United Nations Com-

mission on International Trade Law to obtain, where necessary, the services of consultants or organizations with special expertise in technical matters dealt with by the Commission;

6. Emphasizes the need for full co-operation with the United Nations Commission on International Trade Law in the performance of its task to promote the progressive harmonization and unification of the law of international trade;

7. Approves in principle the establishment of a Yearbook of the United Nations Commission on International Trade Law, which would make the work of the Commission more widely known and readily available, and requests the Commission to consider, at its third session, the timing and content of the Yearbook, in the light of the report of the Secretary-General⁵ and of the discussions of the General Assembly at its twenty-fourth session;

8. Authorizes the Secretary-General to establish the Yearbook referred to in paragraph 7 above in accordance with the decisions and recommendations to be adopted by the United Nations Commission on International Trade Law at its third session;

9. Endorses the decisions and recommendations of the United Nations Commission on International Trade Law concerning the register of organizations and the register of texts,⁶ and requests the Secretary-General to continue the work of preparing and publishing the registers in accordance with those decisions and recommendations;

10. Recommends that the United Nations Commission on International Trade Law should:

(a) Continue its work on the topics to which it decided to give priority, that is, the international sale of goods, international payments, international commercial arbitration and international legislation on shipping;

(b) Continue to give attention to the ways and means which would effectively promote training and assistance in the field of international trade law;

(c) Keep its programme of work under constant review, bearing in mind the important contribution which the progressive harmonization and unification of international trade law can make to economic cooperation among all peoples and, thereby, to their wellbeing;

(d) Give special consideration, in promoting the harmonization and unification of international trade law, to the interests of developing and land-locked countries;

11. Recommends further that the United Nations Commission on International Trade Law should con-

³ A/CN.9/32.
⁴ See Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618), chapter XII, section D.
⁵ A/CN.9/32.
⁶ See Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618), chapter XII, section E.
continue to collaborate fully with international organizations active in the field of international trade law;

12. Requests the Secretary-General to forward to the United Nations Commission on International Trade Law the records of the discussions on the Commission’s report at the twenty-fourth session of the General Assembly.  

1809th plenary meeting, 12 November 1969.

C. List of relevant documents not reproduced in the present volume

<table>
<thead>
<tr>
<th>Title or description</th>
<th>Document reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Register of organizations and register of texts: note by the Secretary-General</td>
<td>A/CN.9/24, Add.1 and 2</td>
</tr>
<tr>
<td>Co-ordination of the work of organizations active in international trade law: report of the Secretary-General</td>
<td>A/CN.9/25</td>
</tr>
<tr>
<td>Working relationships and collaboration with other bodies: note by the Secretary-General</td>
<td>A/CN.9/26</td>
</tr>
<tr>
<td>Training and assistance in the field of international trade Law: report of the Secretary-General</td>
<td>A/CN.9/27</td>
</tr>
<tr>
<td>Consideration of the possibility of issuing a Yearbook: note by the Secretary-General</td>
<td>A/CN.9/28</td>
</tr>
<tr>
<td>Report of Committee II to the Commission</td>
<td>A/CN.9/L.12</td>
</tr>
<tr>
<td>Time-limits and limitations (prescription) in the field of international sale of goods: draft report of Committee I</td>
<td>A/CN.9/L.14</td>
</tr>
<tr>
<td>Report of Committee I to the Commission</td>
<td>A/CN.9/L.15, Add.1, Corr.1 and Add.1, Corr.1; Add. 2,3,4,5,6, Rev.1,7,8,9,10, 11,12, and 13</td>
</tr>
<tr>
<td>Draft report of the Commission on the work of its second session</td>
<td>A/CN.9/L.16, Corr.1,2,3 and Add.1, Corr.1; Add. 2,3,4,5,6, Rev.1,7,8,9,10, 11,12, and 13</td>
</tr>
<tr>
<td>Consideration of inclusion of international shipping legislation among the priority topics in the work programme: draft resolutions proposed by Ghana and India</td>
<td>A/CN.9/L.13</td>
</tr>
<tr>
<td>Consideration of inclusion of international shipping legislation among the priority topics in the work programme: draft resolution proposed by Argentina, Brazil, Chile, Ghana, India, Iran, Kenya, Mexico, the United Republic of Tanzania, Tunisia, and the United Arab Republic</td>
<td>A/CN.9/L.17/ Rev.1</td>
</tr>
<tr>
<td>Consideration of inclusion of international shipping legislation among the priority topics in the work programme: draft resolutions proposed by Argentina, Belgium, Brazil, Chile, Ghana, India, Iran, Kenya, Mexico, Spain, United Republic of Tanzania, Tunisia and United Arab Republic</td>
<td>A/CN.9/L.17/ Rev.2</td>
</tr>
<tr>
<td>Consideration of inclusion of international shipping legislation among the priority topic in the work programme: draft resolutions proposed by Belgium and Italy</td>
<td>A/CN.9/L.18</td>
</tr>
</tbody>
</table>