

# **Progressive Development of the Law of International Trade: Report of the Secretary-General of the United Nations, 1966**

United Nations (UN)

copy @ [lexmercatoria.org](http://lexmercatoria.org)

---

Copyright © 1966 United Nations (UN)

<b>Contents</b>			
<b>Progressive Development of the Law of International Trade: Report of the Secretary-General of the United Nations, 1966</b>	<b>1</b>		
<b>Introduction</b>	<b>1</b>		
<b>I. The law of international trade</b>	<b>2</b>		
<b>A. Concept of “law of international trade”</b>	<b>2</b>		
<b>B. Legal techniques used to reduce conflicts and divergencies</b>	<b>3</b>		
<b>1. Choice of Law Rules</b>	<b>3</b>		
<b>2. Harmonization and Unification of Substantive Rules</b>	<b>3</b>		
<b>C. Development of the law of international trade</b>	<b>4</b>		
<b>1. Similarity</b>	<b>4</b>		
<b>2. Application</b>	<b>5</b>		
<b>3. Formulation</b>	<b>5</b>		
<b>II. Survey of the work in the field of harmonization and unification of the law of international trade</b>	<b>6</b>		
<b>A. Inter-governmental organizations</b>	<b>6</b>		
<b>1. The International Institute for the Unification of Private Law</b>	<b>6</b>		
<b>2. The Hague Conference on Private International Law</b>	<b>8</b>		
		<b>3. The League of Nations</b>	<b>10</b>
		(a) The Geneva Conventions on the unification of the law relating to bills of exchange (1930) and to cheques (1931) . . . . .	10
		(b) The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 . . . . .	11
		<b>4. The United Nations</b>	<b>11</b>
		(a) The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 . . . . .	11
		(b) Industrial property legislation . . . . .	12
		(c) United Nations regional economic commissions . . . . .	13
		(i) Economic Commission for Europe (ECE) . . . . .	13
		(ii) Economic Commission for Asia and the Far East (ECAFE) . . . . .	15
		(iii) Economic Commission for Latin America (ECLA) . . . . .	16
		(iv) Economic Commission for Africa (ECA) . . . . .	17
		(d) United Nations Conference on Trade and Development (UNCTAD) . . . . .	17
		(e) Centre for Industrial Development . . . . .	18
		<b>5. The United Nations Specialized Agencies</b>	<b>19</b>
		(a) International Bank for Reconstruction and Development (IBRD) . . . . .	19
		(b) Inter-Governmental Maritime Consultative Organization (IMCO) . . . . .	19
		(c) The International Civil Aviation Organization (ICAO) . . . . .	20
		<b>6. United International Bureaux for the Protection of Intellectual Property (BIRPI)</b>	<b>20</b>
		<b>B. Regional inter-governmental organizations and groupings</b>	<b>21</b>

<b>1. The Council for Mutual Economic Assistance (CMEA)*</b>	<b>21</b>	<b>D. Summary: main areas of harmonization and unification</b>	<b>33</b>
<b>2. The European Economic Community (EEC)</b>	<b>22</b>	<b>III. Methods, approaches and topics suitable for the progressive harmonization and unification of the law of international trade</b>	<b>33</b>
<b>3. The European Free Trade Association (EFTA)</b>	<b>23</b>	<b>A. Methods</b>	<b>33</b>
<b>4. The Latin American Countries</b>	<b>23</b>	<b>B. Approaches</b>	<b>34</b>
(a) Unification of conflict rules . . . . .	24	<b>C. Suitable topics</b>	<b>35</b>
(b) International commercial arbitration . . . . .	24	<b>IV. Role of the United Nations in the progressive harmonization and unification of the law of international trade</b>	<b>36</b>
(d) Other activities . . . . .	25	<b>A. Progress and shortcomings of the work in the field of harmonization and unification of the law of international trade</b>	<b>36</b>
<b>5. The Council of Europe</b>	<b>25</b>	<b>B. Desirable action to remedy the existing shortcomings</b>	<b>38</b>
<b>6. The Benelux Countries</b>	<b>26</b>	<b>C. Role of the United Nations</b>	<b>38</b>
<b>7. The Nordic Council</b>	<b>26</b>	<b>1. Is the Unification and Harmonization of the Law of International Trade an Appropriate Subject for United Nations Action?</b>	<b>38</b>
<b>8. The Organization of African Unity (OAU)</b>	<b>27</b>	<b>2. Would a United Nations Participation in this Activity Unnecessarily Duplicate the Work of Existing Agencies and Reduce or Abolish their Usefulness?</b>	<b>39</b>
<b>9. The Asian-African Legal Consultative Committee</b>	<b>27</b>	<b>3. Would the United Nations be in a Position to Make a Significant Contribution to Furthering Unification on A World-Wide Scale or Otherwise?</b>	<b>40</b>
<b>C. Non-governmental organizations</b>	<b>27</b>		
<b>1. The International Chamber of Commerce (ICC)</b>	<b>27</b>		
(a) The Court of Arbitration . . . . .	28		
(b) Incoterms 1953 . . . . .	29		
(c) Uniform customs and practice for documentary credits	30		
<b>2. The International Maritime Committee (IMC)</b>	<b>30</b>		
<b>3. The International Association of Legal Science</b>	<b>31</b>		
<b>4. The International Law Association (ILA)</b>	<b>32</b>		
<b>5. The Institute of International Law</b>	<b>32</b>		

<b>4. Should the Functions of the United Nations be Confined to Co-Ordination or Should they Also Encompass Formulation?</b>	<b>40</b>
<b>5. Is There a Realistic Chance of Success or is the Task too Difficult for Tangible Results?</b>	<b>40</b>
<b>D. Establishment of a United Nations Commission on International Trade Law</b>	<b>41</b>
<b>E. Financial implications of the establishment of a United Nations commission on international trade law</b>	<b>43</b>
Endnotes . . . . .	43
<b>Metadata</b>	<b>44</b>
SiSU Metadata, document information . . . . .	44

**Progressive Development of the Law of International Trade:  
Report of the Secretary-General of the United Nations, 1966**

**Introduction**

1. This report is submitted pursuant to resolution 2102 (XX), adopted by the General Assembly on 20 December 1965.
2. In the discharge of his responsibilities under the terms of operative paragraph 1 of that resolution, the Secretary-General retained the services of Professor Clive M. Schmitthoff of the City of London College, a well-known authority on the law of international trade, who was requested to prepare a preliminary study on the subject.
3. On the basis of Dr. Schmitthoff's study the Secretary-General prepared a draft report which was sent for comments to the following experts: Dr. Margarita Arguas (Argentina), Dr. Taslim O. Elias (Nigeria), Professor Gyula Eorsi (Hungary), Professor Willis L. Reese (United States), and Professor Mustafa Kamil Yasseen (Iraq).
4. The experts consulted expressed agreement with the conclusions reached in the report and with the suggestions made therein. They also contributed valuable comments and proposals, which were taken into account in the preparation of the final version of this report.
5. During the debate on this item in the Sixth Committee it was agreed that "consultations with the International Law Commission, other United Nations organs and autonomous institutions should be conducted informally by the Secretary-General." Accordingly, the views of the Commission were sought as to whether it would be in a position to undertake additional responsibilities in the area

of international trade law.'The Secretary-General has been advised that, in view of its manifold activities and responsibilities and considering its extensive agenda, the Commission does not believe that it would be appropriate for it to become responsible for work in the field of the progressive development of the law of international trade.

6. In the preparation of this report the Office of Legal Affairs consulted the Secretariat units most directly concerned, namely, the Department of Economic and Social Affairs, the Centre for Industrial Development, the United Nations Conference on Trade and Development (UNCTAD), and the United Nations regional economic commissions. Consultations were also conducted with the following specialized agencies: the Inter-Governmental Maritime Consultative Organization (IMCO), the International Bank for Reconstruction and Development (IBRD), and the International Civil Aviation Organization (ICAO); and with the following other institutions: International Institute for the Unification of Private Law (UNIDROIT), the Hague Conference on Private International Law, the International Chamber of Commerce (ICC), and the United International Bureaux for the Protection of Intellectual Property (BIRPI).
7. The Secretary-General wishes to record his appreciation for the useful comments and suggestions received; some of these suggestions have been incorporated in the report. While it was not feasible to publish all of the comments received in the course of these consultations, in order to provide the General Assembly with as much information as possible, certain observations submitted by The Hague Conference on Private International Law and by the International Institute for the Unification of Private Law, being of a more general nature, are given in an addendum to this report (A/6396/Add.1).
8. This report consists of four chapters. Chapter I describes

the scope of the concept of “law of international trade” and the techniques used to reduce conflicts and divergencies arising from the laws of different countries in matters relating to international trade. It also contains a brief historical survey of the different stages through which the law of international trade has developed. Chapter II consists of a broad survey of the work done by inter-governmental organizations and groupings and by non-governmental organizations in the harmonization and unification of the law of international trade as well as on directly related subjects. Chapter III deals with the methods used in the progressive harmonization and unification of the law of international trade and discusses some of the advantages and disadvantages of world-wide, regional and other approaches. It also indicates topics which might be suitable for harmonization and unification. Chapter IV discusses the progress and shortcomings of the work done until now in this field, the desirable action to remedy such shortcomings and the possible role of the United Nations in furthering the progressive development of the law of international trade. Finally, the report discusses the possibility of establishing a United Nations commission on international trade law and suggests the functions and responsibilities of the commission and its secretariat.

11 9. There are also three annexes to the report containing additional data on the activities of organizations concerned with the subject and other relevant information.

12 **I. The law of international trade**

13 **A. Concept of “law of international trade”**

14 10. For the purposes of General Assembly resolution 2102 (XX) and as used in this report, the expression “law of international trade” may be defined as the body of rules governing commer-

cial relationships of a private law nature involving different countries. This definition is consistent with the concept of the law of international trade described in the explanatory memorandum of the Permanent Representative of Hungary<sup>1</sup> and in the Secretariat note submitted to the twentieth session of the General Assembly, which listed the following as examples of topics falling within the scope of the law of international trade.<sup>2</sup>

(a) International sale of goods:	15
(i) Formation of contracts;	16
(ii) Agency arrangements;	17
(iii) Exclusive sale arrangements.	18
(b) Negotiable instruments and banker's commercial credits.	19
(c) Laws relating to conduct of business activities pertaining to international trade.	20
(d) Insurance.	21
(e) Transportation:	22
(i) Carriage of goods by sea;	23
(ii) Carriage of goods by air;	24
(iii) Carriage of goods by road and rail; (iv) Carriage of goods by inland waterways.	25
(f) Industrial property and copyright.	26
(g) Commercial arbitration.	27

11. The scope of this report does not extend to international com- 28

<sup>1</sup>Ibid., Nineteenth Session, Annexes, annex No. 2, document A/5728.

<sup>2</sup>Ibid., Twentieth Session, Annexes, agenda item 92, document A/C.6/L.572, para. 3. 1...]

mercial relations on the level of public law, such as those relating to the attitude and behaviour of States when regulating, in the exercise of their sovereign power, the conduct of trade affecting their territories. Illustrations of commercial relationships of this type are bilateral treaties of commerce or multilateral treaties such as the General Agreement on Tariffs and Trade (GATT) or the Rome Treaty establishing the European Economic Community. International commodity arrangements are also excluded from the scope of this report.

29 12. On the other hand, international commercial relations on the level of private law entered into by governmental and other public bodies or, particularly in countries of centrally planned economy, by foreign trade corporations, are deemed to be included within the definition of the law of international trade.

30 13. Another area within the concept of the law of international trade is that of conventions, the object of which is the regulation of a topic of international trade law, such as the Brussels Convention of 1924 for the Unification of Certain Rules relating to Bills of Lading for the Carriage of Goods by Sea, the Hague Convention of 1964 relating to a Uniform Law on the International Sale of Goods (Corporeal Movables), The Hague Convention of 1964 relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (Corporeal Movables), and The Hague Convention on the Law Applicable to International Sales of Corporeal Movables of 15 June 1955.

31 **B. Legal techniques used to reduce conflicts and divergencies**

32 14. As indicated in the preamble to General Assembly resolution 2102 (XX), “conflicts and divergencies arising from the laws of different States in matters relating to international trade constitute an

obstacle to the development of world trade”.

15. In order to reduce such conflicts and divergencies two basic techniques have been followed, which are different but complementary: the first relates to the choice of law rules within the framework of private international law, and the second relates to the progressive unification and harmonization of substantive rules. 33

**1. Choice of Law Rules** 34

16. The purpose of the first technique is to establish rules regulating the conflict of laws, i.e., rules relating to the choice of competing substantive laws applicable to a particular transaction, and rules governing the determination of the competence of courts in a particular litigation. This has been described as the “clinical” method of “finding the best possible solution of the acute case at bar”.<sup>3</sup> The Bustamante Code, Book II of which is entitled “International Commercial Law”, is the most comprehensive attempt made so far to establish conflict rules in the field of the law of international trade (see paras. 129-130 below). The contribution of The Hague Conference on Private International Law in this area is described in paragraphs 38 to 49 below. 35

**2. Harmonization and Unification of Substantive Rules** 36

17. The second, which has been described as the “preventive” method, has the purpose of avoiding law conflicts.<sup>4</sup> The contribution of the International Institute for the Unification of Private Law, 37

<sup>3</sup>See Hilding Eek, *The Swedish Conflicts of Laws* (The Hague, Nijhoff, 1965), p. 272.

<sup>4</sup>As the representative of China observed, “. . . should the various countries succeed in enacting uniform rules of substantive law, the rules of private international law would no longer be relevant since those rules presupposed

which is the organization most directly specializing in this subject, is described in paragraphs 27 to 37 below.

38 18. The most effective method of conflict avoidance is undoubtedly the universally accepted regulation of a particular transaction. There can be no conflict of laws where a common solution is accepted by all municipal laws. Thus, before the Reformation, law conflicts relating to the validity and dissolution of marriage - which are so frequent today - hardly existed in Western Europe because the law of the Roman Catholic church was universally accepted in that area.

39 19. Of a similar nature was the medieval law merchant. In the structure of medieval society the merchants formed a cosmopolitan class which was active at the fairs, markets and ports of all European countries. Commercial custom, universally accepted, developed legal institutions which, to the present day, are the normal instruments of international trade. Amongst them are the bill of exchange, the bill of lading, insurance, the commercial corporation and the customs of the sea.

### 40 C. Development of the law of international trade

41 20. The development of the law of international trade has gone through three stages. In the first phase it appeared in the form of the medieval *lex mercatoria*, a body of universally accepted rules.<sup>5</sup>

that municipal laws would remain intact and merely sought to mitigate the disadvantages arising from them." He recalled "Beckett's comment that private international law was in a sense the antithesis of the universal unification of law. Its *raison d'être* was the existence in different systems of law ... both the process of codification of private international law and that of unification of private law were designed to promote international trade, provided they advanced by degrees and did not turn out to have aims which were incompatible." (See Official Records of the General Assembly, Twentieth Session, Sixth Committee, 895th meeting, paras. 13 and 15.)

<sup>5</sup>See e.g., Gerard de Malynes' *Lex Mercatoria*, first published in 1636.

In the second stage it was incorporated into the municipal law of the various national States which succeeded the feudal stratification on medieval society. The culmination of this development was the adoption in France of the Code de commerce of 1807,<sup>6</sup> in Germany the promulgation of the *Allgemeine Handelsgesetzbuch* of 1861,<sup>7</sup> and in England the incorporation of the custom of merchants into the common law by Lord Mansfield.<sup>8</sup> The third stage in the development of the law of international trade is contemporary. Commercial custom has again developed widely accepted legal concepts, particularly such trade terms as *f.o.b.* and *c.i.f.*, and the institution of the bankers' commercial credit, and international conventions have brought a measure of unification in important branches of the law of negotiable instruments, of transport by sea, air and land, of arbitration and other topics.

21. The law of international trade in the third stage of its development shows three characteristics. First, the rules of international trade exhibit a remarkable similarity in all municipal jurisdictions. Secondly, their application in the various municipal jurisdictions is provided for by authority of the national sovereigns. Thirdly, their formulation is brought about by international agencies created by Governments or by non-governmental bodies. These three characteristics require further examination.

### 1. Similarity

22. The similarity of the law of international trade transcends the

<sup>6</sup>Preceded by the *Ordonnance sur le commerce* of Louis XIV of 1673 and Colbert's *Ordonnance de la marine* of 1681.

<sup>7</sup>Preceded by the *Allgemeine Wechselordnung* of 1848. The *Allgemeine Handelsgesetzbuch* of 1861 is still in operation in Austria; in Germany it was superseded by the *Handelsgesetzbuch* of 1897.

<sup>8</sup>See T.F.T. Plucknett, *A Concise History of the Common Law*, 4th ed., (London, Butterworth, 1948), p. 332.

division of the world between countries of free enterprise and countries of centrally planned economy, and between the legal families of the civil law of Roman inspiration and the common law of English tradition.<sup>9</sup> As a Polish scholar observed, “the law of external trade of the countries of planned economy does not differ in its fundamental principles from the law of external trade of other countries, such as e.g., Austria or Switzerland. Consequently, international trade law specialists of all countries have found without difficulty that they speak a `common language’”<sup>10</sup>

45 23. The reason for this universal similarity of the law of international trade is that this branch of law is based on three fundamental propositions: first, that the parties are free, subject to limitations imposed by the national laws, to contract on whatever terms they are able to agree (principle of the autonomy of the parties' will); secondly, that once the parties have entered into a contract, that contract must be faithfully fulfilled (*pacta sunt servanda*) and only in very exceptional circumstances does the law excuse a party from performing his obligations, viz., if force majeure or frustration can be established; and, thirdly that arbitration is widely used in international trade for the settlement of disputes, and the awards of arbitration tribunals command far-reaching international recognition and are often capable of enforcement abroad.

46 **2. Application**

47 24. It is generally recognized that the modern law of international trade is not imposed by an international legislator or applied in the

<sup>9</sup>See Clive M. Schmitthoff, “The Law of International Trade, Its Growth, Formulation and Operation” in *The Sources of the Law of International Trade with special reference to East-West Trade*, edited by Clive M. Schmitthoff (New York, Praeger, 1964), p. 3.

<sup>10</sup>See Henryk Trammer, “The Law of Foreign Trade in the Legal Systems of the Countries of Planned Economy,” *ibid.*, p. 42.

municipal jurisdictions *proprio vigore* as part of the *jus gentium*. The law of international trade is applied in the municipal jurisdictions by leave and licence of the national sovereigns.<sup>11</sup> It follows that national public policy or *ordre public* of a particular State will, in principle, override or qualify a rule of international trade law. It has been observed that “in the application of the rules of international trade internal order is sufficiently protected by *ordre public*, and there is, therefore, no need for restriction of the scope of their application by postulating the requirement of bilateral application”.<sup>12</sup>

**3. Formulation**

48

25. The formulation of the rules of international trade by international “formulating agencies” is the outstanding characteristic of the modern development of international trade law. Some of these agencies are United Nations organs, as for example, the Economic Commissions for Europe, Asia and the Far East, Latin America and Africa. Others are inter-governmental organizations, as for example, the International Institute for the Unification of Private Law, the Hague Conference on Private International Law, the Council for Mutual Economic Assistance. Some agencies are formed by merchants, for example, the International Chamber of Commerce and the International Maritime Committee and others by international jurists, such as the International Law Association. The work of the afore-mentioned, as well as of other “formulating agencies” is described in chapter II of the present report.

49

<sup>11</sup>See Clive M. Schmitthoff, “The Law of International Trade, Its Growth, Formulation and Operation,” *ibid.*, p. 4.

<sup>12</sup>See Aleksandar Goldstajn, “International Conventions and Standard Contracts as Means of Escaping from the Application of Municipal Law,” *ibid.*, p. 109.

50 **II. Survey of the work in the field of harmonization and  
unification of the law of international trade**

51 26. This chapter contains a brief description of the inter-governmental organizations and groupings and the non-governmental organizations which have been active in this field, together with a survey of their work in the progressive harmonization and unification of the law of international trade. In order to provide the General Assembly with a broad picture of the subject, the survey has in some cases been extended to activities which, although they might not fall strictly within the purview of international trade law, are directly related thereto.

52 **A. Inter-governmental organizations**

53 **1. The International Institute for the Unification of Private Law**

54 27. The Institute, which is generally referred to as UNIDROIT or the Rome Institute, has its seat at Rome and was established by a multilateral treaty in 1926 under the aegis of the League of Nations. Its present constitution is contained in the Statute of the Institute of 15 March 1940, as amended in June 1957, July 1958 and December 1963. Article 2 of the Statute provides that the Institute “is an international body responsible to the participating Governments”, and according to Article 5 the General Assembly of the Institute “shall consist of one representative from each of the participating Governments”. Governments other than the Italian Government are represented by their diplomatic representatives accredited to the Italian Government, or by their deputies.

55 28. At present, the Governments of forty-three countries<sup>13</sup> are members of UNIDROIT. Geographically twenty-four of the mem-

<sup>13</sup>Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, Colombia, Cuba, Denmark,

ber countries are European, eleven are Latin American, five are Asian, two are African and one is North American. The majority of the member countries consist of countries of free enterprise economy. Although at the present time most of the member countries are European, the Institute is engaged in efforts to expand its membership.

29. The work of the Rome Institute in the preparation of draft Conventions is widely recognized as being of great value. A list of the items currently on the working programme of the Institute and a list of items on which the Institute has been working in the past will be found in annex II.

30. The drafts prepared by the Institute formed the basis of conventions which have been adopted by diplomatic conferences, notably the Convention relating to a Uniform Law on the International Sale of Goods (Corporeal Movables) and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (Corporeal Movables) which were concluded at the Diplomatic Conference on the Unification of Law governing the International Sale of Goods convened by the Government of the Netherlands and held at The Hague in April 1964. The Conventions were opened for signature on 1 July 1964. Of the twenty-seven States which signed the Final Act of the Conference, all but three (Bulgaria, Hungary and Yugoslavia) are countries of free enterprise economy and geographically twenty-two are located in Europe., three in Latin America and North America and two in Asia. Any State Member of the United Nations or any of the specialized

Ecuador, Federal Republic of Germany, Finland, France, Greece, Holy See, Hungary, India, Iran, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Portugal, Roumania, San Marino, Spain, Sweden, Switzerland, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Yugoslavia.

agencies may become a party to these Conventions.<sup>14</sup>

58 31. The work of the Rome Institute on the international codification of the law relating to the sale of goods and connected topics includes also four uniform laws in preparation, viz., on the conditions of validity of the contract of sale; on the protection of the bona fide purchase of goods (corporeal movables); on the contract of commission on the international sale or purchase of goods (draft convention); and on credit sale and hire-purchase.

59 32. Draft conventions of the Rome Institute relating to topics other than the sale of goods likely to be considered by diplomatic conferences in 1967 are the following: the draft convention on the contract for the international carriage of passengers and luggage by road; the draft convention on the contract of international combined carriage of goods; and the draft convention on the contract of forwarding agency in the international carriage of goods.

60 33. Some of the drafts of the Rome Institute were not submitted directly to diplomatic conferences but formed the basis for measures promoted by other international agencies. Thus, the Draft Convention on the Contract for the International Transport of Goods

<sup>14</sup>For analyses and comments on The Hague Conventions, see e.g. Philippe Kahn, "La Convention de la Haye du 1er juillet 1964 portant loi uniforme sur la vente internationale des objets mobiliers corporels" in *Revue trimestrielle de droit commercial* (Paris). vol. 17, 1964, p. 45; John Honnold, "The Uniform Law for the International Sale of Goods: The Hague Convention of 1964" in *Law and Contemporary Problems* (Durham, North Carolina), vol. 30, 1965, p. 326; Harold Berman, "The Uniform Law on International Sale of Goods: A Constructive Critique," *ibid.*, p. 354; Gunnar Lagergren, "The Uniform Law on Formation of Contracts for the International Sale of Goods" in *Journal of Business Law* (London, 1966), p. 22; Ernst von Caemmerer, "Internationales Kaufrecht" in *Festschrift für Hans Carl Nipperdey...* (Munich, Beck, 1955), p. 211; Andre Tunc, *Commentary of The Hague Convention of 1 July 1964 on the International Sale of Goods and on the Formation of Contracts of Sale* (The Hague, Ministry of Justice 1966); Jorge Barrera Graf, *La Reglamentación uniforme de las compraventas internacionales de mercaderías* (Mexico, D.F., Universidad Nacional Autónoma, 1965).

by Roads formed the basis of the Convention on the Contract for the International Carriage of Goods by Road (CMR), concluded under the auspices of the United Nations Economic Commission for Europe in 1956; and the Draft Uniform Law on Compulsory Insurance of Motorists formed the basis of the Benelux Treaty of 1955 on the Compulsory Insurance against Civil Liability in respect of Motor Vehicles, and the European Convention on Compulsory Insurance of Motorists, concluded under the auspices of the Council of Europe.

34. Apart from these proposals for the unification of particular topics of private law, the Rome Institute is engaged in research into ways and means of advancing the task of unification.<sup>15</sup> It is, in particular preparing two studies: one on methods of unification and harmonization of law, and the other on measures designed to ensure uniformity of interpretation of uniform laws.

35. The Rome Institute has issued a number of valuable publications, the most important of which are:

(a) The yearbook, *Unification of Law*, which presents a general survey of the work on the unification of private law with specific reference to conventions and draft conventions.

(b) The quarterly, *Uniform Law Cases*, which contains decisions of national courts on conventions and uniform laws. In particular, leading cases on the following are included: the Brussels Convention of 1924 on Bills of Lading; the Warsaw Convention of 1929 on International Carriage by Air; the Geneva Convention on Negotiable Instruments of 1930 and 1931.

<sup>15</sup>See Antonio Malintoppi, "The Uniformity of Interpretation of International Conventions on Uniform Laws and of Standard Contracts," in Schmitthoff, *op. cit.*, pp. 127-137.

65 (c) Tables of legal activities on the programmes of certain international organizations, which are prepared by the secretariat of the Institute in connection with meetings of the organizations concerned with the unification of law, arranged by the Rome Institute. So far three meetings have been held, the first in 1956, the second in 1959, and the last in 1963.<sup>16</sup> A list of inter-governmental and non-governmental organizations which took part in the third meeting is given in annex II.

66 36. The latest table has been brought up to date to 1 January 1966 by the Institute and may be found in annex III.

67 37. It should further be noted that in 1959 the Rome Institute concluded an arrangement with the United Nations on the reciprocal exchange of information and documentation, in order to promote co-operation and co-ordination between the United Nations and the Institute. This arrangement was made pursuant to resolution 678 (XXVI) of 3 July 1958 of the Economic and Social Council.

## 68 2. The Hague Conference on Private International Law

69 38. The origin of the Hague Conference can be traced to the influence of the renowned Italian jurist Pasquale Mancini. He submitted a report<sup>17</sup> to the second session of the Institute of International Law in Geneva in 1874 in which he advocated the unification of the rules of the conflict of laws in the various national jurisdictions. The first

<sup>16</sup>The record of the IIIrd Meeting may be found in *Unification of Law: Yearbook, 1963* (Rome, Editions Unidroit, 1964).

<sup>17</sup>See "Utilite de rendre obligatoires pour tous les Etats, sous la forme d'un ou de plusieurs traites internationaux, un certain nombre de regles generales du droit international prive, pour assurer la decision uniforme des conflits entre les diferentes legislations civiles et criminelles" in *Revue de droit international*, (Paris), vol. 7, 1931, p. 329.

Hague Conference on Private International Law was convened by the Government of the Netherlands and held in 1893.<sup>18</sup> The Conference originally held its sessions on an ad hoc basis, but subsequent meetings took place with a certain regularity though at long intervals. At its seventh session in 1951, the Conference adopted its present Statute which entered into force on 15 July 1955 as a multilateral international treaty.<sup>19</sup>

39. According to article 1 of the Statute, it is the objective of the Conference to work for the progressive unification of the rules of private international law. These objectives are thus quite different from those of the Rome Institute, which attempts to unify specified branches of substantive law of different countries. The Statute provides in article 2 that countries which have taken part in one or several sessions of the Conference and accept the Statute shall be members of the Conference. Other States may be admitted as members by decision of the majority of votes cast by the participating members. In addition to the sixteen States which were represented at the adoption of the Statute,<sup>20</sup> eight have become members of the Hague Conference: Czechoslovakia, Greece, Ireland, Israel, Turkey, the United Arab Republic, the United States of America, and Yugoslavia. Hungary, Liechtenstein and Poland have signed or adhered to Conventions sponsored by the Conference but have not become members. Of the twenty-four member States, only two - Czechoslovakia and Yugoslavia - have centrally planned economies. Twenty States are European, two are Asian, one is African (United Arab Republic), and one is North American (United States of America). None of the Latin American countries

<sup>18</sup>The decision to convene this first Conference owed much to the initiative of Tobias Asser, who subsequently served as President of the first four Hague Conferences (1893, 1894, 1900, 1904).

<sup>19</sup>United Nations, *Treaty Series*, vol. 220 (1955), No. 2997, p. 121.

<sup>20</sup>Austria, Belgium, Denmark, Federal Republic of Germany, Finland, France, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland.

participated, perhaps because they have their own arrangements for the unification of conflict of laws rules, which are to be found in the Treaties of Montevideo and the Bustamante Code (see paras. 129-134 below).

71 40. The method of operation of the Conference is to prepare draft conventions for adoption by member States at the sessions of the Conference. The Conference also promotes the signature and ratification of conventions prepared by it and, where appropriate, the incorporation by States of the terms of these instruments into their national legislation. These activities distinguish the Conference from the Rome Institute and from certain other formulating agencies.

72 41. While the earlier conventions deal mainly with family law, some of the conventions adopted by the seventh to tenth sessions attempt to unify conflict rules to international trade law.

73 42. The most successful Hague Convention pertaining to international trade law is the Convention on the Law Applicable to International Sales of Goods of 15 June 1955<sup>21</sup> This Convention is in force with respect to Belgium, Denmark, Finland, France, Italy and Norway as of 1 September 1964 and with respect to Sweden as of 6 September 1964. The main provisions of this Convention have been summed up by an English writer as follows:

74 "A contract for the sale of goods is regulated by the domestic law of the country designated by the parties. Failing such a designation, the contract is regulated by the domestic law of the country where the seller has his habitual residence at the time when he receives the order. If the order is received by a branch office of the seller the contract is regulated by the domestic law of the country where such branch is located. Nevertheless the contract is regulated by the domestic law of the country where the buyer has his habitual

<sup>21</sup>United Nations, Treaty Series, vol. 510 (1964), No. 7411, p. 147.

residence if the order has been received in that country by the seller or his agent."<sup>22</sup>

43. The conflict regulation in favour of the substantive law of seller's country has also been used in paragraph 74 of the General Conditions of Delivery of Goods, 1958, of the Council for Mutual Economic Assistance (see paras. 115-120 below), and in the arbitration clauses of the General Conditions of Sales, Nos. 188, 574 and 730 of the United Nations Economic Commission for Europe (see paras. 67-74 below). 75

44. Mention should also be made of Convention Relating to Civil Procedure signed at The Hague on 1 March 1954,<sup>23</sup> which is important for international commerce in that it deals with the enforcement of obligations sought in the national courts of the parties concerned. The States Parties to the Convention are Austria, Belgium, Czechoslovakia, Denmark, the Federal Republic of Germany, Finland, France, Hungary, Italy, Luxembourg, the Netherlands, Norway, Poland, Spain, Sweden, Switzerland and Yugoslavia. 76

45. Another Convention promoted by the Hague Conference which has come into operation is the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.<sup>24</sup> This Convention was concluded on 5 October 1961; it came into operation for France, the United Kingdom of Great Britain and Northern Ireland and Yugoslavia on 24 January 1965, for the Netherlands on 8 October 1965, and for the Federal Republic of Germany on 13 February 1966. 77

46. Other conventions in the field of international commercial law promoted by the Hague Conference which have not yet entered 78

<sup>22</sup>See G.C. Cheshire, "International Contracts for the Sale of Goods," in *Journal of Business Law* (London, 1960), p. 285.

<sup>23</sup>United Nations, Treaty Series, vol. 286 (1958), No. 4173, p. 265.

<sup>24</sup>*Ibid.*, vol. 527 (1965), No. 7625, p. 189.

into force are: the Convention on the Law Applicable for the Transfer of Property in International Sales of Corporeal Movables of 15 April 1958; the Convention on the Jurisdiction of an Agreed Court in International Sales of Corporeal Movables of 15 April 1958; the Convention on the Recognition of the Legal Personality of Companies, Associations and Foreign Foundations of 1 June 1956; the Convention on the Choice of Court of 25 November 1965; and the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 26 April 1966.

79 47. The Conference concluded an Agreement with the Council of Europe under which the latter will not deal with the unification of private international law and will refer to the Hague Conference all proposals on that subject which are made at its meetings. The Council may invite the Conference to elaborate a convention on a specific matter. Both the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, of 5 October 1961, and the draft Convention on the Recognition and Enforcement of Foreign Judgements (Final Act of 26 April 1966) were drafted as a direct result of such requests.

80 48. All of the proceedings of the Conference and many of the documents submitted by Governments or drafted by the secretariat are published in volumes bearing the title *Actes et documents de la Conference de La Haye de droit international prive*, . . . session.

81 49. In 1958 the Hague Conference concluded an arrangement with the United Nations similar to that which exists between the Rome Institute and the United Nations, providing for co-operation, co-ordination and exchange of information and documentation. As in the case of the Rome Institute, this arrangement was made pursuant to resolution 678 (XXVI) of 3 July 1958 of the Economic and Social Council.

### 3. The League of Nations

82

50. The activities of the League of Nations with respect to the unification of the law of international trade related mainly to negotiable instruments and to international commercial arbitration. Reference is made below to several of the more important instruments which were formulated under the auspices of the League.

83

#### (a) The Geneva Conventions on the unification of the law relating to bills of exchange (1930) and to cheques (1931)

84

51. On 7 June 1930, three conventions on the unification of the law relating to bills of exchange<sup>25</sup> were signed at Geneva, and on 19 March 1931 three further conventions on the unification of the law relating to cheques<sup>26</sup> were signed at Geneva. The most important of these conventions are the Convention providing a Uniform Law for Bills of Exchange and Promissory Notes and the Convention providing a Uniform Law for Cheques. The others deal with conflict of law rules and provisions of national stamp legislation relating to these types of negotiable instruments.

85

52. The Geneva Conventions have achieved a significant unification of the law of negotiable instruments. The uniform law relating to both types of negotiable instruments has been introduced into the municipal legislation by sixteen countries, viz., Brazil, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Japan, Monaco, the Netherlands, Norway, Poland, Portugal, Sweden and Switzerland. In addition, Austria, Belgium and the USSR have ac-

86

<sup>25</sup>League of Nations, Treaty Series, vol. CXLIII (1933-1934), No. 3313, p. 257; No. 3314, p. 317; No. 3315, p. 337.

<sup>26</sup>Ibid., vol CXLIII (1933-1934), No. 3301, p. 7; No. 3316, p. 355; No. 3317, p. 407.

cepted the Uniform Law on Bills of Exchange only, and Nicaragua has introduced the Uniform Law on Cheques only.

87 53. The countries belonging to the common law system did not take part in this unification of the law of negotiable instruments, nor have any of these countries given effect to these uniform laws in its territory.

88 **(b) The Geneva Protocol on Arbitration Clauses of 1923<sup>27</sup> and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927<sup>28</sup>**

89 54. The Protocol deals with the recognition of arbitration agreements; each of the Contracting States undertakes to recognize the validity of such agreements between parties subject to the jurisdiction of different Contracting States. The Convention provides that an arbitral award made pursuant to an arbitration agreement covered by the Protocol shall be recognized as binding and shall be enforceable in the territories of the Contracting States, subject to certain conditions, among them the condition of reciprocity.

90 55. The Protocol has been ratified by fifty-three countries and the Convention by forty-four countries. These two arrangements have been the foundation for the acceptance of international commercial arbitration as the most practical method of settling disputes arising from transactions of international trade.

91 **4. The United Nations**

92 56. The United Nations has been engaged in activities in this field on a worldwide as well as on a regional scale. The most important

<sup>27</sup>Ibid., vol. XXVII (1924), No. 678, p. 157.

<sup>28</sup>Ibid., vol. XCII (1929-1930), No. 2096, p. 301.

world-wide activities have been on the subject of international commercial arbitration, industrial property legislation and transit trade of land-locked countries. Activities on a regional scale have been performed by the United Nations regional economic commissions, notably in the areas of standardization of trade documents, international contracts and commercial arbitration.

**(a) The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958<sup>29</sup>**

93

57. The growing intensity of modern international trade and the concomitant need to develop facilities for arbitration caused the international business community to consider the Geneva arrangements as inadequate. In response to this situation, the Economic and Social Council, on the initiative of the International Chamber of Commerce, decided to convene a diplomatic conference in New York to conclude a new Convention.

94

58. The Convention there adopted on 10 June 1958 is designed to supersede the Geneva arrangements and, at the same time, to make more effective the international recognition of arbitration agreements and the recognition and enforcement of foreign arbitral awards.<sup>30</sup>

95

59. The United Nations Convention represents a definite advance over the Geneva arrangements in that it facilitates to a considerable degree the enforcement of foreign arbitral awards. First, it abolishes, in principle, the requirement of reciprocity, although a

96

<sup>29</sup>United Nations, Treaty Series, vol. 330 (1959), No. 4739, p. 3.

<sup>30</sup>For analysis and comments on the Convention, see e.g. Paolo Contini, "International Commercial Arbitration - The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards" in American Journal of Comparative Law (Ann Arbor), vol. 8, 1959, p. 283; Samuel Pizar, "The United Nations Convention on Foreign Arbitral Awards" in Journal of Business Law (London, 1959), p. 219.

State may declare that it will apply the Convention to awards made only in the territory of other Contracting States (article 1 (3)). Secondly, it abolishes the requirement of double exequatur which in many countries is a serious obstacle to the enforcement of foreign arbitral awards (article V (1) (e)). Thirdly, it is no longer necessary for the recognition of an arbitration agreement or for the enforcement of an arbitral award that the parties should be subject to the jurisdiction of different contracting States (articles I (1) and 11 (1)).

97 60. The United Nations Convention came into force on 7 June 1959. Thirty-one States have become parties to it (see annex I).

#### 98 **(b) Industrial property legislation**

99 61. Since 1961 the United Nations General Assembly has had before it the problem of the role of industrial property legislation in facilitating the transfer of patented and unpatented technological and managerial know-how to developing countries. At its sixteenth session, the General Assembly adopted resolution 1713 (XVI) on the role of patents in the transfer of technology to underdeveloped countries, in which it requested the Secretary-General to study the issues involved, including specifically, the effects of patents on the economy of developing countries; patent legislation in selected developed and developing countries; and the characteristics of the patent legislation of developing countries in the light of economic development objectives.

100 62. The study, which was prepared in the Fiscal and Financial Branch of the Department of Economic and Social Affairs in response to that resolution,<sup>31</sup> provided a comprehensive review of

<sup>31</sup>The Role of Patents in the Transfer of Technology to Developing Countries (United Nations publication, Sales No.: 65.11.B.I).

the major characteristics of national patent laws and the international patent system as well as a thorough analysis of the economic implications of the introduction of patent legislation in developing countries. The study emphasized, inter alia, that properly adapted patent legislation was essential if the patent system was to be beneficial to economic development and advancement of industry in developing countries.

63. The United Nations Conference on Trade and Development in recommendation A.IV.26 of 15 June 1964 specifically recommended that “competent international bodies, including United Nations bodies and the Bureau of the International Union for the Protection of Industrial Property, should explore possibilities for adaptation of legislation concerning the transfer of industrial technology to developing countries ...”. A similar position was taken by the Economic and Social Council in resolution 1013 (XXXVII), which requested “the Secretary-General to explore possibilities for adaptation of legislation concerning the transfer of industrial technology to developing countries, generally and in co-operation with the competent international bodies, including United Nations bodies and the Bureau of the International Union for the Protection of Industrial Property”.

64. On this basis representatives of the Secretary-General cooperate with the United International Bureaux for the Protection of Intellectual Property (BIRPI) in the preparation of the Bureaux's Draft Model Laws in this field (see paras. 108-111 below). The first of these, the Model Law for Developing Countries on Inventions,<sup>32</sup> incorporates most of the Secretary-General's substantive recommendations regarding the major problem areas of compulsory licensing and working of patents, government review of international licence agreements, and the administration of industrial

<sup>32</sup>BIRPI publication 801 (E), Geneva, 1965.

property legislation.<sup>33</sup>

103 **(c) United Nations regional economic commissions**

104 65. The functions of the United Nations regional economic commissions, which have been established in accordance with resolutions of the Economic and Social Council, are to assist in raising the level of economic activity in their respective regions and to strengthen economic relations on both an intraregional and an interregional level.

105 **(i) Economic Commission for Europe (ECE)**

106 66. The activities of the Economic Commission for Europe (ECE) in the development of the law of international trade have been primarily in the field of international contracts and commercial arbitration. These activities have been initiated in most cases by the Committee for the Development of Trade. In addition to its activities with respect to international contracts and commercial arbitration, ECE through its Inland Transport Committee, has engaged in efforts toward the simplification and standardization of export documents and has concerned itself with the problem of insurance and re-insurance, of trade in machinery and equipment, the improvement of payment arrangements and other items. It also sponsors periodic consultations of experts in intra-European, and especially East-West, trade.

107 **a. The ECE General Conditions of Sale and Standard Forms of Contract**

108 67. Since the end of the nineteenth century, trade associations

<sup>33</sup>See note by the Secretary-General of the United Nations (E/4078, annex A).

have come into existence in many European trade centres and have concerned themselves especially with the international commodity trade. This development has been particularly prominent in the United Kingdom, where influential organizations operate, such as the Timber Trade Federation of the United Kingdom, the London Corn Trade Association, the Incorporated Oil Seed Association (London), and many others. Most of these trade associations have devised their own contract forms. There is "a surprisingly large number of these forms of contract on the market that not only differ from trade to trade but also from country to country. The would-be user is very often confronted with an embarrassingly large choice of forms of contract which he could use. He is also confronted with the fact that nearly all these instruments refer to one legal system alone, and have been drawn solely with that system in view, namely, that of the country of the trade association or organization that drafted them."<sup>34</sup> In an effort to meet these conditions, ECE has formulated and disseminated the General Conditions of Sale and Standard Forms of Contract. It is to be hoped that in the course of time these will replace the numerous contract forms issued by trade associations. A list of the forms issued by ECE is found in annex I. Among the most important of these are General Conditions for the Supply of Plant and Machinery for Export (Form No. 188) (March 1953); General Conditions for the Supply and Erection of Plant and Machinery for Import and Export (Form No. 188A) (March 1957); General Conditions for the Supply of Plant and Machinery for Export (Form No. 574) (December 1955); General Conditions for the Supply and Erection of Plant and Machinery for Import and Export (Form 574A) (March 1957); General Conditions of Sale for the Import and Export of Durable Consumer Goods and of Other Engineering Stock Articles (Form No.730) (March 1961).

68. It is to be noted that Forms 574 and 574A are alternatives to

<sup>34</sup>See Peter Benjamin, "The ECE General Conditions of Sale and Standard Form of Contract" in *Journal of Business Law* (London, 1961), p. 119.

109

Forms 188 and 188A. The latter are used when both parties reside in countries of free enterprise economy and the former are used when one party or both parties are foreign trade organizations having centrally planned economies.<sup>35</sup> Form 730, on the other hand, is adapted for use in all transactions irrespective of the economic order of the country in which the contracting parties reside.

110 69. The ECE General Conditions of Sale have been drafted by working parties composed of businessmen. Representatives from almost every European country, including countries having free-enterprise economies as well as those having centrally planned economies, have served on the working parties since 1951. Many national trade associations have lent their support and assistance in this work. Thus when the forms of contract for the sale of cereals by sea were prepared, more than eighty national forms of contract were sent in, of which some fifty were the forms of contract drawn up by the London Corn Trade Association.<sup>36</sup>

111 70. The use of the General Conditions of Sale and Standard Forms of Contract sponsored by ECE is optional. This is a characteristic which they share with the formulations of the International Chamber of Commerce (see paras. 147-166 below).

112 71. Two features of this work of ECE should be noted. First, the General Conditions represent a projection on the international level of work begun by the trade associations on the national level. Secondly, some of the trade association contracts undoubtedly favoured the sellers or buyers, according to the balance of interests in the trade associations. This factor was removed when the forms were studied by a working party composed of suppliers and consumers and eventually approved by ECE.

113 72. From the viewpoint of the progressive development of the law

<sup>35</sup>On the difference between these two sets, see "East-West Trade and UN ECE Conditions" in *Journal of Business Law* (London, 1965), p. 100.

<sup>36</sup>See Peter Benjamin, *op.cit.*, p. 123.

of international trade, the most important feature of the General Conditions is that, as one writer has indicated they "render it somewhat redundant to refer to a national legal system".<sup>37</sup> In brief, the General Conditions attempt to provide such a complete regulation of the rights and duties of the contracting parties that a need to refer to a national legal system will arise only in exceptional circumstances. While it may not be possible to make a contract completely self-regulatory, it is noteworthy that at least an attempt is made by means of the ECE forms to achieve that aim.

73. It is too soon to assess whether the standard conditions sponsored by ECE will be as widely accepted by the international commercial community as are the formulations published by the International Chamber of Commerce although so far the result appears to be encouraging. Over a million copies have been sold of the various ECE Conditions for the Supply of Plant and Machinery. National trade associations have utilized them for their own standard contract forms, and they have been translated into various unofficial languages, including German, Italian, Portuguese, Spanish, Turkish and various Scandinavian languages. (The official languages are English and French and, for some forms, Russian . )

74. Detailed explanations are to the practical application of the General Conditions of Sale and Standard Forms will be published by the ECE in near future on the "Preface to the General Conditions of Sale and Standard Forms of Contract".

## b. European Convention on International Commercial Arbitration

75. The Commission was responsible for the preparation of this Convention which was signed on 21 April 1961 and came into

<sup>37</sup>*Ibid.*, p. 116.

force on 7 January 1964.<sup>38</sup> Of the eighteen signatory States, eleven have ratified this Convention, namely Austria, Bulgaria, the Byelorussian SSR, Czechoslovakia, the Federal Republic of Germany, Hungary, Poland, Romania, the Ukrainian SSR, the USSR and Yugoslavia. Of these eleven countries nine are countries of centrally planned, and two of free enterprise economy. In addition, Cuba and Upper Volta have adhered to the Convention. The seven outstanding ratifications are those of countries of free enterprise economy. In addition to the eighteen signatory States, the following States have nominated "Appointing Authorities" for the purposes of the Arbitration Rules of January 1966 made under the Convention. Ireland, the Netherlands, Sweden, Switzerland and the United Kingdom.

118 76. The Convention pursues purposes different from those of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (see paras. 57-60 above). The European Convention on International Commercial Arbitration has a twofold purpose: first, to overcome the problem of appointing arbitrators in cases where the parties to an arbitration agreement fail to agree, a particularly difficult problem if the parties reside in countries having a different economic structure, and secondly, to facilitate recourse to commercial arbitration irrespective of the economic structure of the countries in which the parties reside.<sup>39</sup>

119 77. The Convention, like the General Conditions of Sale sponsored by ECE, thus aims, inter alia, at reducing some of the obstacles to the flow of trade between countries of free enterprise economy and countries of centrally planned economy.

120 78. A valuable innovation created by the Convention is the establishment, provided for in article IV, of a special Committee to which

<sup>38</sup>United Nations, Treaty Series, vol. 484 (1963-1964), No. 7041, p. 349.

<sup>39</sup>See David A. Godwin Sarre, "European Commercial Arbitration" in Journal of Business Law (London, 1961), p. 352.

the claimant may apply if the respondent does not co-operate in the appointment of the arbitrator. The Special Committee consists of three members elected for four years. One member is elected by the Chambers of Commerce of countries in which National Committees of the International Chamber of Commerce exist, and one by the Chambers of Commerce of countries in which no such National Committees exist. The third member, who acts as chairman, is elected for two years by the Chambers of Commerce of the first group of countries and for the next two years by the Chambers of Commerce of the second group. This is the only arbitral institution common to the countries of free enterprise and centrally planned economy.

79. The Convention is supplemented by the ECE Arbitration Rules of January 1966.<sup>40</sup> 121

#### (ii) Economic Commission for Asia and the Far East (ECAFE) 122

80. The Economic Commission for Asia and the Far East (ECAFE) 123 has been active in the field of international commercial arbitration for several years. A study on arbitral legislation and facilities in certain countries of the ECAFE region was, for example, completed in 1958 by the ECAFE secretariat and the Office of legal Affairs of the United Nations.

81. In 1962 a Centre for Commercial Arbitration was established 124 within the ECAFE secretariat at Bangkok. The Centre, which co-operates with the Office of Legal Affairs and with commercial experts and national correspondents designated by the member countries, promotes the wider use of commercial arbitration and the creation and improvement of arbitral institutions and facilities in the region.

<sup>40</sup>United Nations publication, Sales No.: 66.11.E/Mim.4.

125 82. Mention should be made of the ECAFE Conference on International Commercial Arbitration which met at Bangkok in January 1966. The Conference recommended the preparation of a set of ECAFE Rules for International Commercial Arbitration to be brought to the attention of chambers of commerce, legal and business associations, universities and other appropriate bodies throughout the ECAFE region. These rules have now been prepared on the basis of standards adopted by the Conference, and will be published shortly.

126 83. The Conference also considered it advisable that separate lists of arbitrators and appointing authorities (authorities entrusted with the function of appointing arbitrators) be prepared and maintained by the ECAFE Centre in consultation with Governments, national correspondents of the Centre and other appropriate institutions. In another recommendation the Conference dealt with the dissemination of model arbitration clauses. The Conference also agreed on certain standards for conciliation which would be appropriate as a guide to parties who wish to have recourse to conciliation for the settlement of their disputes. The Conference recommended that the standards should be adopted by the ECAFE Centre and disseminated throughout the region, in the same manner as the rules for arbitration. The Conference also proposed that the ECAFE Centre should invite each of the main chambers of commerce of the region, through their respective Governments, to constitute panels of businessmen who would be prepared to sit on conciliation committees whenever so requested by parties.

127 84. The recommendations of the Conference were approved by ECAFE's Committee on Trade and, thereafter, by ECAFE itself at its twenty-second annual session in New Delhi.

128 85. The Committee on Trade has received suggestions that ECAFE should initiate projects for the standardization of general conditions of sale for selected commodities and simplification

of export documents,<sup>41</sup> similar to those sponsored by ECE. The Commission has also engaged in studies of the laws and regulations concerning customs administration in the countries of the region with a view to promoting uniform concepts and efficient procedures and has established the ECAFE Code of Recommended Customs Procedures.

### (iii) Economic Commission for Latin America (ECLA)

129

86. The activities of the Economic Commission for Latin America (ECLA) in the field of trade have been directly related to long-term efforts toward increased economic integration within the region. In this connection, the secretariat of ECLA provides advisory services to the member countries of the Latin American Free Trade Association established on 2 June 1961 under the terms of the Montevideo Treaty of 18 February 1960. Studies carried out by the secretariat include research into the simplification and standardization of customs procedures, documentation and nomenclature.

130

87. The Central American Economic Co-operation Committee of ECLA has engaged in efforts toward wider ratification and implementation of the General Treaty on Central American Economic Integration, concluded on 13 December 1960,<sup>42</sup> establishing the Central American Common Market. In this connection, the Committee has engaged in studying standard customs codes and common tariff regulations.

131

88. Furthermore, ECLA has produced studies on the legal aspects of the utilization of international rivers and lakes, and on the terms of trade and their influence on the rate of economic development in the region, as well as on the establishment of a common customs

132

<sup>41</sup>See document E/CN.11/721, para. 54.

<sup>42</sup>United Nations, Treaty Series, vol. 455, (1963), No. 6543, p. 3.

code, and has sponsored seminars on coordination of customs administration.

133 89. With respect to maritime transport, research has been carried out by ECLA on the possibilities of standardization of bills of lading and other documentation.

134 **(iv) Economic Commission for Africa (ECA)**

135 90. The Economic Commission for Africa (ECA) has as its function to promote action among the African States toward the economic and social development of the region and to strengthen the economic relations of the countries concerned among themselves and in relation to other States. To this end, it undertakes studies of and disseminates information on economic problems and development in the area and assists in the formulation of policies to intensify economic development, inter alia, with respect to trade.

136 91. The secretariat of ECA has compiled surveys of intra-African trade and of its potentialities and of respective measures to stimulate trade. Studies have also been carried out on regional trade arrangements, particularly the trade grouping of Western Europe, and their impact on trade in Africa and on the trade of African countries with States having centrally planned economies. The ECA also publishes a survey of current trends in African trade and development in the Economic Bulletin for Africa. Included in ECA's current programme of work are studies of national legislation dealing with trade and such related fields as insurance law and investment codes whose purpose is to enable conclusions to be drawn regarding measures for the harmonization of such legislation, especially on a subregional basis. In connection with the foregoing project, ECA promotes the adoption of the Brussels Tariff Nomenclature,<sup>43</sup> among the member countries of ECA.

<sup>43</sup>The Nomenclature for the Classification of Goods in Customs Tariffs was

137 92. In connection with its resolution 140 (VII) dealing with the coordination of industrial incentives and legislation, ECA reviews legislation and practices with respect to investment incentives and industrial development and has studied the question of harmonization of these matters among the member States. In addition, studies have been initiated on the harmonization of legislation concerning maritime transport and on the constitutional and legal basis of public autonomous institutions and corporations. Arrangements have also been made between ECA and ECE for providing assistance to African States concerning the simplification and standardization of expert documents.

138 93. In co-operation with GATT, ECA sponsors annual courses in commercial policy for both French and English-speaking Africans. It also provides advisory services and organizes ad hoc courses and seminars in customs administration. The establishment, with ECA assistance, of inter-governmental machinery for economic co-operation at the sub-regional level, and the intensive sub-regional studies being carried out by ECA, particularly in industry, agriculture and transport, will no doubt serve as a useful adjunct to possible future participation by African countries in efforts toward the development of international trade law.

139 **(d) United Nations Conference on Trade and Development (UNCTAD)**

140 94. The United Nations Conference on Trade and Development was established as an organ of the General Assembly in 1964 by General Assembly resolution 1995 (XIX). The membership of the Conference consists of the States which are Members of the United

elaborated by the Customs Co-operation Council, which was established as an inter-governmental organization on 15 December 1950, in Brussels. The Brussels Nomenclature has been introduced in seventy-five countries.

Nations or members of the specialized agencies or of the International Atomic Energy Agency. The resolution provides that the Conference is to be convened every three years and that, when the Conference is not in session, the Trade and Development Board, as the permanent organ of the Conference, will carry out its functions.

141 95. A number of particular problems in the area of trade have been dealt with by UNCTAD. The Convention on Transit Trade of Land-Locked Countries<sup>44</sup> was adopted at New York on 8 July 1965 by the Conference of Plenipotentiaries on Transit Trade of Land-Locked Countries, which had been convened by the General Assembly of the United Nations in pursuance of a recommendation by UNCTAD. The Convention includes in the preamble a reaffirmation of the eight principles adopted by the United Nations Conference on Trade and Development. The substantive provisions of the convention deal with inter alia freedom of transit to traffic in transit; means of transport, the facilitation of traffic in transit by mutually acceptable routes, and non-discrimination in regard to traffic in transit, customs duties and special transit dues; free zones or other customs facilities, storage of goods in transit; and settlement of disputes. The Convention, which has not yet entered into force, has been acceded to by Malawi, Mongolia, Niger and Nigeria.

142 96. The Conference also adopted two resolutions. In the first of these resolutions, the Conference requested the Inter-Governmental Maritime Consultative Organization to facilitate the transit trade of land-locked countries in accordance with the provisions of the Convention on the Facilitation of Maritime Travel and Transport concluded in London in 1965 (see para. 103 below). In its other resolution, the Conference recommended the provisions of assistance by United Nations organs in furthering the transit trade of land-locked and transit States.

<sup>44</sup>See document TD/B/18.

### (e) Centre for Industrial Development

143

97. The functions of the Centre for Industrial Development are, inter alia, to promote and co-ordinate activities within the United Nations system of organizations in the field of industrialization and to carry out research and the preparation of studies in the field of industrialization.

144

98. In this connection mention should be made of certain projects on the work programme of the Centre which are of relevance here. These include a study of the problems of the harmonization of industrial tax incentives within the framework of regional co-operation and integration, and research into the role of national export organizations in promoting the export of manufactured goods.

145

99. Research is also being conducted in order to identify industries from the point of view of simultaneous import substitution and export promotion.

146

100. Another relevant project to be undertaken by the Centre in 1967 is the Industrial Legislative Series which is to provide a worldwide review of industrial laws and regulations. The main purpose of publishing the Industrial Legislative Series is to enable developing countries to benefit from the experience acquired by other countries when drafting their industrial laws or amending existing ones. The series is to cover all the different aspects of industrial legislation, such as laws and regulations on patents, standards and specifications, requirements for plant operating licences, industrial sites, factory layout and structure, investment incentives, inspection, import controls, trade marks, taxation, training, forms of organization and registration, use of machinery and equipment, industrial safety and hygiene.

147

## 5. The United Nations Specialized Agencies

### 149 (a) International Bank for Reconstruction and Development (IBRD)

150 101. In accordance with resolution No. 214, adopted by the Board of Governors on 10 September 1964, the Executive Directors of the IBRD formulated the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The submission of the Convention to member Governments of the Bank was approved by the Executive Directors on 18 March 1965. Although investment disputes are generally settled through judicial, arbitral or other procedures available under the laws of the country in which the investment was made, experience has shown that in many instances international machinery for the settlement of investment disputes is considered preferable by both States and investors. The Convention therefore provides, inter alia, for the establishment of an International Centre for Settlement of Investment Disputes which will “provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States” (article 1 (2)). The Centre, while not itself engaging in conciliation or arbitration, will provide facilities for the Conciliation Commission and Arbitral Tribunal which are to be instituted in accordance with the Convention. The organs of the Centre are the Administrative Council, composed of one representative of each contracting State, and the secretariat. The Centre is required to maintain a Panel of Conciliators and a Panel of Arbitrators, from which the parties to a dispute may select the members of the Commission or Tribunal to which the dispute is to be submitted. The jurisdiction of the Centre in disputes is dependent upon the written consent of the parties thereto and extends to “any legal dispute arising directly out of an investment” (article 25 (1)) between a contracting State or a constituent subdivision of a con-

148

tracting State and a national of another contracting State, either a natural or juridical person. Contracting States may, if they so desire, notify the Centre in advance as to the classes of disputes which they would, or would not, consider submitting to the jurisdiction of the Centre (article 25 (4)). Article 53 provides that arbitral awards under the Convention are binding upon the parties and are not subject to any appeal or any other remedy except those stipulated in the Convention. Those remedies are revision (article 51) and annulment (article 52). Parties may also request that the Tribunal make a supplementary award or may request an interpretation of an award.

102. The Convention is open for signature to the States members of IBRD as well as to any State party to the Statute of the International Court of Justice which the Administrative Council shall have invited to sign the Convention, and is subject to ratification acceptance or approval by each signatory State. It will enter into force thirty days after the deposit of the twentieth instrument of ratification acceptance or approval. Thus far it has been signed by forty-four States and ratified by the Central African Republic, Congo (Brazzaville), Gabon, Ghana, the Ivory Coast, Mauritania, Nigeria, Tunisia, Uganda and the United States of America.

151

### (b) Inter-Governmental Maritime Consultative Organization (IMCO)

103. A Conference of Plenipotentiaries, convened in London under the auspices of IMCO, adopted the Convention on the Facilitation of International Maritime Travel and Transport, which was opened for signature on 9 April 1965 (see also para. 96 above). The Convention provides, inter alia, for arrangements designed to unify and simplify the formalities required of shipowners by public authorities on the arrival, stay and departure of ships of the crew and passengers and miscellaneous other provisions.

152

153

154 104. In addition, IMCO has carried out studies on a number of topics relevant to transport for trade and has undertaken work on a universal system of tonnage measurement designed to simplify and harmonize existing methods of calculating tonnage measurements of ships.

155 **(c) The International Civil Aviation Organization (ICAO)**

156 105. This organization has sponsored numerous conventions on air law including the Protocol (signed at The Hague on 28 September 1955)<sup>45</sup> to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929. The Protocol, which entered into force on 1 August 1963 and to which thirty-three States are parties, is designed to bring up to date and amend certain portions of the Warsaw Convention of 1929, which in turn had as its main object the unification of the rules of private law concerning the carrier's liability in international air carriage and in respect of documents for such carriage.

157 106. In addition, ICAO has also sponsored the Convention, supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air, Performed by a Person Other than the Contracting Carrier,<sup>46</sup> which was signed at Guadalajara, Mexico, 18 September 1961. The Convention, which entered into force on 1 May 1964, provides for the extension of certain of the rules of the Warsaw Convention to cases in which the actual carriage by air is performed by a person who was not a party to the agreement for carriage.

158 107. Furthermore, within the framework of the Convention on In-

<sup>45</sup>United Nations, Treaty Series, vol. 478 (1963). No. 6943. p. 371.

<sup>46</sup>Ibid., vol. 500 (1964), No. 7305, p. 31.

international Civil Aviation, concluded at Chicago in 1944,<sup>47</sup> ICAO has engaged in a Facilitation Programme designed to simplify and standardize procedures, inter alia, with respect to aircraft cargo and baggage entering and departing from international airports.

**6. United International Bureaux for the Protection of Intellectual Property (BIRPI)**

159

160 108. The United International Bureaux for the Protection of Intellectual Property, which were founded in 1893, form the permanent organization controlling seven inter-governmental conventions or agreements. In acceding to these international Conventions and Agreements, the Contracting States have undertaken legal and administrative obligations with a view to securing and developing the protection of intellectual property. There are two main types of intellectual property: industrial property (patents, trademarks, etc.); and copyrights on literary and artistic works. The membership of BIRPI comprises countries of free enterprise and centrally planned economies, and includes countries at various stages of development.

160

161 109. The present programme of BIRPI is largely concentrated on the territorial extension of the two principal Unions, i.e., the Paris Union for the Protection of Industrial Property (seventy-four member States) and the Bern Union for the Protection of Literary and Artistic Works (fifty-five member States). In addition, BIRPI is engaged in the preparation of model laws in conformity with the principles of the Conventions.

161

162 110. A description of BIRPI's work and the Conventions it administers will be found in annex III.

162

163 111. Under a working agreement with the United Nations, con-

163

<sup>47</sup>Ibid., vol. 15 (1948), No. 102, p. 295.

cluded in 1964, BIRPI is co-operating with the United Nations and several of its subsidiary bodies under various resolutions in assisting the transfer of technology to developing countries.

## 164 B. Regional inter-governmental organizations and groupings

### 165 1. The Council for Mutual Economic Assistance (CMEA)\*

166 112. The Council for Mutual Economic Assistance (CMEA) was established on 25 January 1949. The present members are Albania, Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Mongolia, Romania and the USSR. In the words of a Polish writer, the purpose of CMEA is "to provide a framework for the systematic exchange of information, economic co-operation, mutual technical and scientific aid, and the exchange of raw materials, food-stuffs, machinery and equipment."<sup>48</sup> A new charter of CMEA<sup>49</sup> was adopted in 1959, which in turn was amended in July 1962, by a provision adding an Executive Committee.

167 113. The preamble of the charter of CMEA provides that the members are "determined to continue the development of comprehensive economic co-operation based on the consistent implementation of the international socialist division of labour in the interest of the building of socialism and communism in their countries ..."<sup>50</sup>

168 114. Foreign trade among members of CMEA has from the beginning been regarded as an important technique of economic in-

<sup>48</sup>See K. Grzybowski, *The Socialist Commonwealth of Nations, Organisations and Institutions* (New Haven, Yale University Press, 1964), p. 67.

<sup>49</sup>United Nations, *Treaty Series*, vol. 368 (1960), No. 5245, p. 253.

<sup>50</sup>*Ibid.*, p. 264.

tegration and co-ordination of national plans. To promote foreign trade in a planned manner members concluded bilateral commercial treaties in which they specified the classes and quantities of goods which had to be exchanged, the mode of payment and, in a protocol, the general conditions for the delivery of the goods. The execution of these commercial treaties was left to the foreign trade corporations of the countries in question, which enter into ordinary export and import contract. The bilateral commercial treaties between the member countries have been described as "the general framework"<sup>51</sup> in which the foreign trade corporations of those countries carry on their mutual trade.

115. On the recommendation of the Foreign Trade Commission of the council, a multilateral arrangement, known as the General Conditions of the Delivery of Goods between Foreign Trade Organizations of Member Countries of the Council of Mutual Economic Assistance of 1958, was concluded.<sup>52</sup> The General Conditions took the place of twenty-eight sets of bilateral Conditions for Delivery which were appended as protocols to the bilateral commercial treaties between CMEA members.

116. The General Conditions of Delivery of 1958 have been given the force of law in the municipal jurisdictions of all CMEA members. It has been said that the General Conditions "are compulsory, and an enterprise may, when concluding a contract, depart from them only if the deflection is justified by the special nature of the merchandise or a special element in its delivery".<sup>53</sup>

117. The General Conditions, as is the case for Incoterms 1953, issued by the International Chamber of Commerce (see paras. 161-

<sup>51</sup>See Trajan Ionasco and Ion Nestor, "The Limits of Party Autonomy" in Schmitthoff, *op. cit.*, p. 170.

<sup>52</sup>See Viktor Knapp, "The Function, Organization and Activities of Foreign Trade Corporations in the European Socialist Countries." in Schmitthoff. *op. cit.*, p. 68.

<sup>53</sup>*Ibid.*

166 below), provide an interpretation of the customary trade terms. 175  
 The terms regulated by them are f.o.r., free on lorry, free frontier, f.o.b., c.i.f., c. and f., free air transport, free delivered. The General Conditions exceed Incoterms in scope in that they provide a complete code of export trade law; they regulate the transfer of property in the sold goods, the passing of the risk, the delivery of the goods, the payment of the price through the bank under commercial credit or collection instructions, and the usual arrangements for insurance and transport.

172 118. The General Conditions provide a clear and practical codification of international trade custom as it relates to members of CMEA.

173 119. Some other activities of CMEA may briefly be mentioned. In December 1962, a system of multilateral accounting in the trade of member States, permitting free movement of balances from account to account, was introduced and on 22 October 1963, the Governments of the member States signed an Agreement on Multilateral Payments and Clearing in Convertible Roubles, of which the statute of the International Bank for Economic Co-operation forms an integral part.<sup>54</sup>

174 120. The contribution of CMEA to the progressive development of international trade law is best exemplified by the elaboration and promotion of the General Conditions of Delivery, the practical usefulness of which is restricted to CMEA members. Beyond that, however, the General conditions have demonstrated that the trading techniques of the countries of centrally planned economy do not differ essentially from those of the countries of free enterprise economy.

## 2. The European Economic Community (EEC)

121. The Treaty establishing the European Economic Community signed at Rome on 25 March 1957<sup>55</sup> is an international treaty to which Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, and the Netherlands are parties. In addition to two European countries (Greece and Turkey), the following nineteen African countries are "associated countries": Burundi, Cameroon, the Central African Republic, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Dahomey, Gabon, the Ivory Coast, Madagascar, Mali, Mauritania, Niger, Nigeria, Rwanda, Senegal, Somalia, Togo and Upper Volta. 176

122. The Treaty of Rome provides in article 100 that "the council, acting by means of a unanimous vote on a proposal of the Commission, shall issue directives for the approximation of such legislative and administrative provisions of the member States as have a direct incidence on the establishment or functioning of the Common Market". Article 220 provides that "member States shall, in so far as necessary, engage in negotiations with each other with a view to ensuring for the benefit of their nationals ... the elimination of double taxation within the Community; the mutual recognition of companies ..., the maintenance of their legal personality in cases where the registered office is transferred from one country to another, and the possibility for companies subject to the municipal law of different member States to form mergers; and the simplification of the formalities governing the reciprocal recognition and execution of judicial decisions and of arbitral awards". 177

123. The measures promoted or prepared in pursuance of these provisions fall into two categories: directives issued by the Council 178

<sup>54</sup>See K. Grzybowski, *op. cit.*, p. 106; see also 1. Vajda "Linking East and West", in *The Times* (London), 4 March 1966.

<sup>55</sup>United Nations, *Treaty Senes*, vol. 298 (1958), No. 4300, p. 3.

of EEC and Draft Conventions among member States (see below, annex I).

179 124. The directives promoted or prepared by the Council can be arranged under three headings: firstly, those aiming at the unification, in the member States, of technical rules on additives to food-stuffs, on pharmaceutical products, motor vehicles, farm tractors, industrial tools, measuring instruments, electrical household appliances and precious metals. Secondly, the commission has proposed to the Council a draft directive relating to the harmonization of company law suggesting uniform provisions for the disclosure of information, the validity of acts of directors and the validity of company formation; other drafts relating to company law are in preparation. Thirdly, a draft directive on insurance will be sent by the Commission to the Council in the near future; its aim is to coordinate the national rules concerning the financial requirements and administrative control of insurance companies.

180 125. The following draft conventions, based on article 220 of the Treaty of Rome, are under preparation by member States: on European patents; on recognition of companies and legal persons; on the recognition and enforcement of judgements originating in other member countries in civil and commercial cases.

### 181 3. The European Free Trade Association (EFTA)

182 126. The Convention establishing the European Free Trade Association (EFTA) was concluded in Stockholm on 4 January 1960.<sup>56</sup> Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom are member States of EFTA<sup>57</sup> which has among

<sup>56</sup>Ibid., vol. 370 (1960), No. 5266, p. 3.

<sup>57</sup>Finland has concluded an Agreement of Association with EFTA (27 March 1961). This Agreement was extended to Liechtenstein by means of a Protocol concluded between the Member States of EFTA and Finland on the one hand

its objectives to promote the expansion of economic activity and to contribute to the development and expansion of world trade and the progressive removal of barriers to it. The council of EFTA, as its governing organ, has the prerogative of issuing decisions binding upon member States (article 32 (4)), as well as non-binding recommendations on matters within its competence. In an effort to harmonize practices in the field of international trade among member States the Council has issued certain directives which are relevant here, such as: Decision No. 4/1960, relating to Evidence of Origin for Re-Exported Goods and Spare Parts for Engineering Goods; Decision No. 7/ 1960, relating to the Origin of Materials Taken into Stock, before July 1960; Decision No. 16/1960 on Evidence of Origin for Consignments of Small Value.

127. In addition, EFTA has constituted a Restrictive Practices Working Party on the effects of restrictive business practices on international trade. The Working Party has carried out, in the course of its work, a general survey of national legislation and practice in this field. 183

128. Studies have also been carried out on national law and administrative regulations with respect to restrictions on the establishment and operation in EFTA countries of business enterprises by nationals of other EFTA countries, in order to determine whether the provisions of article 16, paragraph 1, of the Stockholm Convention relevant to this aspect of international economic cooperation are sufficient. 184

### 4. The Latin American Countries 185

129. In the countries of Latin America significant progress has been made in the unification of conflict-of-laws rules. In addition, there and Liechtenstein on the other (27 March 1961). Ibid., vol. 420 (1962), No. 6043, p. 109. 186

have been other activities within the scope of this report, notably in the fields of international commercial arbitration, international sale of tangible personal property and harmonization and unification of international trade law within the framework of regional economic integration.

187 **(a) Unification of conflict rules**

188 130. The treaties of Montevideo of 12 February 1889, which provided for the unification of conflict rules in the field of civil and commercial law, are still in force with respect to Bolivia, Colombia and Peru. The other three signatories, Argentina, Paraguay and Uruguay, have withdrawn from it. A revision of the 1889 Treaties was carried out at the second session of the Second South American Congress on Private International Law (held at Montevideo in March 1940). Of the treaties adopted on 19 March 1940 by the Congress as part of this revision, the following should be mentioned: Treaty on International Commercial Navigation Law; Treaty on International Procedural Law; Treaty on International Commercial Terrestrial Law; and the Treaty on International Civil Law. These treaties are in force with respect to Argentina, Paraguay and Uruguay. The Sixth International Conference of American States, held at Havana in 1928, adopted the Convention on Private International Law (20 February 1928), to which was annexed the Code of Private International Law. The Conference agreed that the code would be officially named the Bustamante Code after its distinguished drafter. This code has been described as “the most important codification of the rules of the conflict of laws in force today”.<sup>58</sup> The following fifteen countries of South and

<sup>58</sup>See G.A.L. Droz, “L’harmonisation des regles de conflits de lois et de juridictions dans les groupes regionaux d’Etats,” in *Rapports generaux aux Vie Congres international de droit compare* (Hamburg, 30 July-4 August 1962), p. 399.

Central America have accepted the Bustamante Code, though some with reservations: Bolivia, Brazil, Chile, Costa Rica, Cuba, the Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru, El Salvador and Venezuela. The Code establishes rules of conflict of law on a variety of subjects, including the following which relate to international commercial law: merchants, commercial companies, commercial commission, commercial deposit and loans, land transportation, contracts of insurance, contracts and bills of exchange, forgery, robbery, larceny, or loss of public securities and negotiable instruments, ships and aircraft, special contracts of maritime and aerial commerce. At a meeting held in San Salvador in 1965, the Inter-American Council of Jurists of the Organization of American States proposed that the Council of the Organization of American States should convene a conference in 1967 for a revision of the Bustamante Code.

**(b) International commercial arbitration**

(i) The Inter-American Commercial Arbitration Commission

131. The Inter-American Commercial Arbitration Commission, a non-governmental organization, was established in September 1934, at the request of the Governing Board of the Pan American Union, pursuant to resolution XLI of the Seventh International Conference of American States, for the purpose of creating an inter-American system of commercial arbitration. The purposes of the Commission, which has its headquarters in New York, are: (first, the establishment of arbitration facilities in each American country, for which purpose the Commission has appointed national committees in a number of Latin-American countries, responsible for organizing panels of arbitrators and for administering the standard rules of the Commission); secondly, the modification of arbitration laws in order to facilitate the conduct of arbitrations and ensure the enforcement of arbitration agreements and awards;

thirdly, the familiarization of businessmen in the American countries with arbitration procedure and its advantages to exporters and importers in inter-American trade; and fourthly, the arbitration or adjustment of differences or controversies, arising in the course of inter-American trade.

192 (ii) Inter-American draft uniform law on commercial arbitration

193 132. The Inter-American Council of Jurists, at its Third Meeting, held in Mexico City in 1956, approved an Inter-American draft Uniform Law on Commercial Arbitration (resolution VIII), which was based on the studies undertaken by the Inter-American Juridical Committee.<sup>59</sup> In that resolution, the Inter-American Council of Jurists recommended that the American States should, to the extent practicable, adopt in their legislation, in accordance with their constitutional procedures, the said draft uniform law in such form as they considered desirable within their several jurisdictions.<sup>60</sup>

194 (c) International sale of tangible personal property

195 133. At its Fifth Meeting, the Inter-American Council of Jurists, after examining a draft convention on a uniform law on international sale of tangible personal property prepared by the Juridical Committee,<sup>61</sup> instructed the Committee to revise its draft and to direct its efforts toward drafting a uniform law that would consider problems of international trade in the broadest sense possible. It should take into consideration the statements and proposals made at the Fifth Meeting of the Inter-American Council of Jurists, and the conven-

<sup>59</sup>Uniform Law on International Commercial Arbitration, Second draft, document CIJ20-A. Pan American Union, Washington, D.C., 1955.

<sup>60</sup>Final Act of the Third Meeting of the Inter-American Council of Jurists, document CIJ-29. Pan American Union, Washington, D.C., 1956.

<sup>61</sup>Draft Convention on a Uniform Law on the International Sale of Tangible Personal Property, document CIJ-46. Pan American Union, Washington, D.C., 1960.

tions adopted at the Diplomatic Conference on the Unification of Law Governing the International Sale of Goods held at The Hague in April 1964 (see para. 30 above). This topic is on the agenda of the meeting of the Inter-American Juridical Committee, which will start on 10 July 1967.

#### (d) Other activities

197 134. Other activities in the field of harmonization and unification of international trade law have been carried out under the auspices of the Inter-American Institute of International Legal Studies, an non-governmental organization located in Washington. These include two seminars held in 1964 and 1965 for the purpose of furthering research and studies on legal aspects of economic integration, such as commercial law, transportation, commercial companies and negotiable instruments, insurance, patents and trademarks.

### 5. The Council of Europe

199 135. The Council of Europe was established in 1949 by the Statute of the Council of Europe.<sup>62</sup> At present the following eighteen countries are members of the Council: Austria, Belgium, Cyprus, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Sweden, Switzerland, Turkey and the United Kingdom.

200 136. The Council of Europe has promoted the following conventions in the field of the law of international trade:

201 Conventions relating to patents. European Convention relating to the Formalities Required for Patent Applications,<sup>63</sup> which came into

<sup>62</sup>United Nations, Treaty Series, vol. 87 (1951), No. 1168, p. 103.

<sup>63</sup>Ibid., vol. 218 (1955), No. 2952, p. 27.

force on 1 June 1955; European Convention on the International Classification of Patents for Invention,<sup>64</sup> which came into force on 1 August 1955; Convention on the Unification of Certain Points of Substantive Law on Patents for Invention, which is not yet in force.

202 Conventions relating to arbitration. Agreement of 17 December 1967<sup>65</sup> relating to the Application of the European Convention on International Commercial Arbitration, which had come into force on 7 January 1964; European Convention of 20 January 1962 providing a Uniform Law on Arbitration, which is not yet in force.

203 Convention relating to hotelkeepers. European Convention on the Liability of Hotelkeepers concerning the Property of their Guests, which is not yet in force.

204 Convention relating to companies. European Convention of 20 January 1966 on Establishment of Companies, which is not yet in force.

205 137. In 1965 the European Committee on Legal Co-operation established under the auspices of the Council of Europe, approved the text of a draft Convention on Foreign Money Liabilities, which will be opened for signature by the member States in the near future.

206 138. Studies are also being carried out on questions concerning companies with limited liability, and the Committee will shortly begin work on study of the sale of goods (corporeal movables).

207 139. The Committee is at present examining other matters which may lead to the conclusion of the following instruments: a convention on the place of payment of foreign money liabilities; a draft European convention on information on foreign law, which will provide for the establishment of a body to supply information about

<sup>64</sup>Ibid., vol. 218 (1955), No. 2953, p. 51.

<sup>65</sup>Ibid., vol. 523 (1965), No. 7555, p. 93.

the law in force in the territories of the Contracting Parties in civil and commercial matters; a convention on lost or stolen bearer securities; and a convention on the recognition and execution in one Contracting State of arbitral awards made in another Contracting State.

## 6. The Benelux Countries

208

140. The three Benelux countries - Belgium, the Netherlands and Luxembourg - have constituted the Benelux Commission for the Unification of Private Law.

209

141. The work of unification carried out by the Commission has led to three measures. On 11 May 1951, the three countries signed a Treaty on a Uniform Law on Private International Law. The object of the Uniform Law is to establish complete unity of conflict rules in the three countries. Only Luxembourg has ratified the treaty. Secondly, the Commission has prepared a draft treaty on jurisdiction, bankruptcy, the execution of judgements, arbitral awards and official documents. Thirdly, a Benelux Trade-Mark Convention was concluded on 19 March 1962 but has not yet entered into force.

210

## 7. The Nordic Council

211

142. The Nordic Council was established in 1952 by the Governments of Denmark, Norway, Iceland and Sweden. Finland adhered to the Statute of the Council in 1955.

212

143. The countries of the Nordic Council adopted uniform laws relating to bills of exchange and the sale of goods. Further, a Uniform Contracts Act, a Mercantile Agents Act and an Act on Conditional Sales were adopted. The Conditional Sales Act was enacted in Denmark, Norway and Sweden. Essentially uniform Acts

213

on copyright, including copyright in photographs, were enacted in 217 Denmark, Finland, Norway and Sweden in 1960 and 1961. Denmark, Sweden and Norway enacted uniform legislation on trademarks between 1959 to 1961. Uniform legislative measures are being considered or are in preparation on company law, bankruptcy, unfair competition, patents, trade names, enforcement of judgments and other topics.

214 144. The Scandinavian countries have further concluded a number of international conventions for the settlement of problems of inter-Scandinavian conflicts of laws. In addition, those countries have concluded a Convention regarding the Recognition and Enforcement of Judgements (1932)<sup>66</sup> and a Convention regarding Bankruptcy (1933).<sup>67</sup>

## 215 8. The Organization of African Unity (OAU)

216 145. Since its establishment on 25 May 1963 the Organization of African Unity (OAU) has devoted attention to the problems of trade and transport among its member States. Preliminary studies, such as that made by the secretariat of the OAU of the possible establishment of an African Free-Trade Area, have formed the basis of the work of various expert groups dealing with economic cooperation and integration. More recently the Transport and Communications Commission of the OAU has given consideration to possible methods of the harmonization and co-ordination of national and regional systems of land, water and air transport.

## 9. The Asian-African Legal Consultative Committee

146. The Committee, established at New Delhi in 1956 as an inter-governmental organization composed of legal experts acting in an advisory capacity, engages, inter alia, in studies of problems referred to it by member countries. It has made recommendations concerning the elaboration of proposed model rules on the recognition and enforcement of foreign judgments in civil cases (Baghdad, 1965) and on immunity of States in respect of commercial transactions of a private character (Cairo, 1958). It has furthermore carried out studies on double taxation and on laws relating to international sales and purchases. 218

### C. Non-governmental organizations 219

#### 1. The International Chamber of Commerce (ICC) 220

147. The International Chamber of Commerce (ICC) was founded 221 in 1919. Its origins can be traced back to a meeting of the International Congress of Chambers of Commerce and Commercial and Industrial Associations in 1905, which was followed by further periodic meetings. In 1919 it was resolved that, instead of periodic meetings, a permanent organization should be created and the ICC was established at the Congress of Paris in July 1920. It has Category A consultative status with the Economic and Social Council.

148. The ICC constitutes a federation of business organizations 222 and businessmen. It is a non-governmental body, neither supervised nor subsidized by Governments.

149. The ICC has national committees in more than forty countries; 223 with the exception of Yugoslavia, these are all countries having a

<sup>66</sup>League of Nations, Treaty Series, vol. CXXXIX (1933-1934), No. 3209, p.

free enterprise economy. In other countries the ICC is represented by organizations or associate members without national Committees. The ICC is represented in many regions of the world. Of the countries in which it is represented, twenty-one are in Europe, nineteen in Asia, nine in Africa, sixteen in America and two in Oceania.

224 150. The ICC's activities extend to two fields. First, its aim is to act as spokesman for the business community in the international field and to present the business point of view to Governments and to world public opinion. Secondly, it attempts to ease the mechanism of world trade by removing the various technical obstacles which hamper the free flow of goods and services. Its programme is divided into four main parts: economic and financial policy; production, distribution and advertising; transport and communications; law and commercial practice.

225 151. The ICC's organization is based on its national committees. Every national committee has a secretariat and working parties. In addition, the ICC has a congress which meets every second year, a council and an international secretariat with its headquarters in Paris.

226 152. The main aim of the ICC in the development of international trade law is to ascertain trade customs and to formulate them in a generally acceptable form. This is done through study groups of businessmen assisted by the international secretariat, and through the sending of detailed questionnaires to the national committees, which reply after consulting the national working parties. The result of this research is then published and, where required, the publications are revised from time to time. The form of publication reflects the certainty of the trade custom with which it deals. In some instances the customs of international trade can be stated with a high

165.

<sup>67</sup>Ibid., vol. CLV (1934-1935), No. 3574, p. 115.

degree of certainty, e.g., in the case of Incoterms 1953 (see paras. 161-163 below) and the Uniform Customs and Practice for Documentary Credits. In other cases, only general guidance can be given, e.g., in the case of Commercial Agency. In a third type of case, commercial custom is vague so that only a tentative statement of facts can be offered, e.g., in the Problem of Clean Bills of Lading.

153. In addition, the ICC has played an active part in the preparation of a number of multilateral instruments in the field of the law of international trade, such as the Convention of 1 July 1964 relating to a Uniform Law on the International Sale of Goods (Corporeal Movables).

154. A catalogue of ICC's main publications is found in annex I.

155. The major contributions of the ICC to the development of commercial law are the Court of Arbitration and its rules of procedure, the Incoterms and the Uniform Customs and Practice for Documentary Credits.

### (a) The Court of Arbitration

156. The Court of Arbitration is an institutional arbitration tribunal having a permanent secretariat and utilizing the ICC national committees, however, the arbitrators are appointed ad hoc in every arbitrable dispute. There is no panel of arbitrators, but according to article 7 (2) of the Rules of Conciliation and Arbitration of 1 June 1955,<sup>68</sup> arbitrators suggested by the parties must be confirmed by the Court of Arbitration. If the parties fail to appoint one or several arbitrators and that task falls upon the Court, the Court will choose

<sup>68</sup>International Chamber of Commerce, Rules of Conciliation and Arbitration (Paris, 1955).

the national committee or committees from which it shall request nominations. Sole arbitrators and umpires must be nationals of countries other than those of the parties (article 7 (3)). Unless the parties agree in advance on the place of arbitration, the Court of Arbitration determines the venue of the arbitration.

232 157. Conciliation procedure is optional and is carried out by the Administrative Commission for Conciliation established at the ICC (articles 1-5).

233 158. In major international transactions, arbitration before the Court of Arbitration of the International Chamber of Commerce is becoming increasingly popular. It is used not only in disputes between private enterprises, but also between private enterprises and States which have submitted to its procedure. It is also sometimes used in disputes between trading concerns of free enterprise and centrally planned economies.

234 159. In February 1963, the ICC published an analysis of 300 cases decided by the Court.<sup>69</sup> Of these, about 4 per cent concerned disputes between States and individuals. The following is the breakdown according to parties.

235 Twenty-two European countries: 253 plaintiffs and 246 defendants.

236 The American continent: 26 plaintiffs and 33 defendants.

237 Asia: 18 plaintiffs and 13 defendants.

238 Africa: 15 plaintiffs and 12 defendants.

239 Australia: 2 plaintiffs and 2 defendants.<sup>70</sup>

240 160. While the sums involved in the disputes submitted to the Court

<sup>69</sup>International Chamber of Commerce, Guide to /CC Arbitration (Paris, 1963), p. 11.

<sup>70</sup>Ibid., pp. 9-10.

varied as widely as the subjects of the disputes, the average sum in dispute in the 300 cases under review was approximately \$US 150,000, the total amount involved in the 300 cases thus amounting to almost \$US 40 million.

### (b) Incoterms 1953

241

242 161. Incoterms 1953 is a set of international rules for the interpretation of nine frequently used trade terms. The terms regulated by the formulation are: ex works, f.o.r. (free on rail, free on truck), f.a.s. (free alongside), f.o.b. (free on board), c. and f. (cost and freight), c.i.f. (cost, insurance, freight), freight and carriage paid to, ex ship, and ex quay. The obligations of the seller and the buyer are defined in Incoterms as clearly and precisely as possible.

242

243 162. Incoterms are based upon the greatest common measure of practice current in international trade and ascertained by the ICC as the result of detailed studies by the various national committees. The ICC refused to incorporate in these terms desirable improvements on current practice. "In the opinion of the Chamber's Committee, there are two objections to this policy: (i) what practical merchants have evolved over the years as convenient is always likely to be better than theoretical improvements, and (ii) the prime consideration is to get one set of international rules agreed and widely adopted. If that could be achieved it would be a great step forward, and on the basis of it thereafter improvements may gradually be accepted."<sup>71</sup>

243

244 163. The practical utilization of Incoterms is widespread. It was reported in July 1963<sup>72</sup> that more than 100,000 copies of the English and French original had been issued: in addition, translations

244

<sup>71</sup>International Chamber of Commerce, Incoterms 1953 (Paris 1953/1954), p. 8.

<sup>72</sup>By Gunnar Lagergren in the Introduction to Frederic Eisemann's Die Incoterms in Handel und Verkehr (Vienna, GOF-Verlag, 1963), p. ix.

exist in fifteen languages. Incoterms are widely used as standard terms of business by trade associations. instances of that use occur, for example, in the German Muhlenbau-und-Industrie G.m.b.H. or the French Syndicat general de l'industrie de jute. The United Nations Economic Commission for Europe embodied a reference to Incoterms, with regard to the passing of the risk in the General Conditions for the Supply of Plants and Machinery for Export, Forms Nos. 188 and 188A (1953), but substituted its own regulation for such reference in later formulations. Some foreign trade corporations of countries with centrally planned economies use Incoterms in their transactions with enterprises of countries with free enterprise economies. This is done, for example, by the Polish corporations Varimax and Cetebe and by the Czechoslovak corporations Controtex, Ligna, Prago-Export. Sometimes even bilateral agreements between countries of centrally-planned economy which are not both members of CMEA provide for the application of Incoterms, e.g. the agreements between East Germany, on the one hand, and North Korea and North Viet-Nam respectively, on the other.

### 245 (c) Uniform customs and practice for documentary credits

246 164. The 1962 Revision of these rules is considered to be a successful example of the unification of modern practices in international trade. Prepared by the Commission on Banking Techniques and Practice of the ICC, the Revision first sets out general provisions and definitions relating to bankers' commercial credits, then deals with the form and notification of credits, the documents to be presented to the correspondent bank, various miscellaneous provisions, and finally the transfer of credits.

247 165. While the earlier Revision of 1951 had already been widely accepted and used for the opening and the execution of bankers'

commercial credits, since the Revision of 1962, which came into operation on 1 July 1963, the British and Commonwealth banks as well have adhered to the Uniform Customs. Today the Uniform Customs are accepted in 173 countries and territories<sup>73</sup> adhering to different economic systems. Since the commercial credit is the most important and most frequently employed mechanism for the payment of the purchase price in export transactions,<sup>74</sup> the importance of this unifying formulation of the ICC is significant.

166. It should be kept in mind that the Uniform Customs are considered to be implicitly embodied into contractual relations and there is rarely an express reference to them. Although formerly the parties were required to express adoption of the Incoterms, a tendency has become apparent to consider that the Incoterms are relevant also to commercial transactions, even in the absence of explicit reference, unless the parties have expressed a contrary intention.

## 2. The International Maritime Committee (IMC)

167. The International Maritime Committee (IMC) was founded in 1896 and held its first congress in 1897. In the words of one writer, "today the [IMC] is the only international organization dedicated exclusively to the unification of private maritime law on a global scale ... Its main object is to further by conferences and by publications and divers works the unification of maritime law".<sup>75</sup>

168. The IMC is a non-governmental organization on which are represented predominantly commercial interests engaged in

<sup>73</sup>For listings of the countries and territories concerned, see ICC document 470/INT.79 (19 April 1966).

<sup>74</sup>See Clive M. Schmitthoff, *The Export Trade*, 4th ed. (London, Stevens and Sons, 1962), pp. 211 ff.

<sup>75</sup>See A.N. Yiannopoulos, "The Unification of Private Maritime Law by International Conventions," in *Law and Contemporary Problems* (Durham, North Carolina, 1965), vol. 30, pp. 370, 372-3 (foot-notes omitted).

maritime transport, such as shipowners, cargo owners, forwarding agents, bankers and insurers; lawyers specializing in shipping law are likewise represented. The membership of the IMC consists of individuals and national organizations interested in shipping. Today twenty-seven of these national associations adhere to it.<sup>76</sup> The twenty-sixth conference of the IMC, which was held in Stockholm in June 1963, was attended by delegations from twenty-one countries: Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, India, Ireland, Italy, Japan, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the United Kingdom, the United States of America and Yugoslavia.

252 169. The IMC has prepared thirteen conventions on uniform laws, most of which have been ratified by a considerable number of countries.

253 170. A list of the Conventions is appended in annex I.

254 171. The most successful convention promoted by the IMC is the International Convention for the Unification of Certain Rules Relating to Bills of Lading, signed at Brussels on 25 August 1924.<sup>77</sup> The Brussels Convention has been ratified by twenty-eight countries (see annex I). In 1963, at the twenty-sixth meeting of the IMC in Stockholm, certain amendments to The Hague Rules were adopted under the title of the Visby Rules, which were to be submitted to governmental consideration at a Diplomatic Conference at Brussels. So far, no diplomatic conference has been convened for that purpose, but the Governments of the Scandinavian countries have requested the Belgian Government to call such a Conference as soon as possible.

<sup>76</sup>See P. Chauveau, "L'unification du droit maritime et le C.M.I.," in *Revue trimestrielle de droit commercial* (Paris), vol. 16, 1963, p. 137.

<sup>77</sup>League of Nations, Treaty Series, vol. CXX (1931-1932), No. 2764, p. 155.

### 3. The International Association of Legal Science

255

172. The Association is a non-governmental organization established under the auspices of UNESCO and having its seat in Paris. The main objects of the Association are, according to article 3 of its statutes, to "foster the development of legal science throughout the world through the study of foreign laws and the use of the comparative method. It has the ultimate object to aid the mutual knowledge and understanding of nations."

256

173. The membership of the Association is composed of national committees and associated members. The latter are international institutions, (the goals of which are in harmony with those of the Association and to which that status is accorded by the International Committee of Comparative Law, which is the Executive Committee of the Association. The Association has no individual members.

257

174. National committees exist in the thirty-nine countries listed in annex I. Of these, six countries have centrally planned economies. Geographically twenty-three are European, seven Latin American, six Asian, two North American and one African. The Association has a Council, an Executive Committee (the International Committee of Comparative Law) and a Secretary-General. The Association, assisted by UNESCO, held four colloquia on the law of international trade: in Helsinki in 1960; in Trier in 1961; in London in 1962; and in New York in 1964. The research of these colloquia is contained in three volumes, with a fourth in preparation.<sup>78</sup>

258

<sup>78</sup>Harold J. Berman and others, *Aspects juridiques du commerce avec les pays d'économie planifiée* (Paris, Librairie générale de Droit et de Jurisprudence, 1961); *Some Problems of Non-Performance and Force Majeure in International Contracts of Sale*, edited by H.E. Jokela (Helsinki, Institute of Comparative Law at the University of Helsinki, 1961); *The Sources of the Law of International Trade with special reference to East-West Trade*, edited by Clive M. Schmitthoff (New York, Praeger, 1964); and *L'unification du droit de la vente internationale*,

259 175. The Association is currently sponsoring the publication, under the general direction of the Max Planck Institut für ausländisches und internationales Privatrecht, in Hamburg, of an International Encyclopedia of Comparative Law which will deal, in large part, with the law relating to international trade.

#### 260 4. The International Law Association (ILA)

261 176. The International Law Association was founded on 10 October 1873. According to article II of its constitution, as amended in 1950 and 1958, its objects include “the study, elucidation and advancement of international law, public and private, the study of comparative law, the making of proposals for the solution of conflicts of laws, and for the unification of law, and the furthering of international understanding and goodwill”.

262 177. The International Law Association is a non-governmental organization, established in London, which in 1956 had over 2,600 members who were either individuals or bodies.<sup>79</sup> In 1962 it had thirty-four branches in countries located in all continents and belonging to different economic systems, including the United States and the USSR.<sup>80</sup>

263 178. The Association, which has an Executive Council and a Secretary-General, arranges biannual conferences at which a number of topics pertaining to public and private international law are discussed. The reports of these meetings are published.

264 179. The major contributions of the International Law Association

edited by John Honnold (in preparation).

<sup>79</sup>See N.V. Boeg, “The International Law Association” in *Liber Amicorum of Congratulations to Algor Bagge...* (Stockholm, Norstedt, 1956).

<sup>80</sup>International Law Association, Report of the 50th Conference, (Brussels, 1962), pp.iii to lxvii.

are: the formulation of the York-Antwerp Rules 1950 on the adjustment of General Average; and the drafting of the The Hague Rules relating to bills of lading, which formed the basis of the Brussels Convention on Bills of Lading of 25 August 1924 (see para. 171 above).

180. In addition, the Association has made a number of valuable suggestions for the unification of international commercial law, such as the Rules of Copenhagen of 1950, which deal with commercial arbitration.

#### 266 5. The Institute of International Law

267 181. The Institute of International Law is a non-governmental organization founded in 1873 and having its headquarters in Paris. It has fifty-seven members and fifty-five associate members from thirty-nine countries. The members and associate members serve in their individual capacity and are selected from among persons who have rendered valuable service to international law, either in the theoretical or practical sphere.

268 182. Among the objectives of the Institute is the promotion of the progressive development of international law by giving assistance to genuine attempts at gradual and progressive codification of international law.

269 183. In the field of international commercial law, various commissions of the Institute have dealt with such topics as the legal aspects of capital investments in the developing countries (9th Commission); the contract of transport in private international law (19th Commission); and companies in private international law (28th Commission).

## D. Summary: main areas of harmonization and unification

271 184. The foregoing survey has shown that, in addition to matters relating to industrial property and transportation by sea, air and land, the following are the major areas in which the most progress has been made towards the unification and harmonization of the law of international trade: the law of international sale of goods; the law relating to the supply and erection of plant and machinery abroad; the law relating to bills of exchange; the law relating to bankers' commercial credits; and the law of commercial arbitration.

272 185. With respect to the law of international sale of goods the major formulations are: the Convention of 1 July 1964 relating to a Uniform Law on the International Sale of Goods (Corporeal Movables), promoted by the International Institute for the Unification of Private Law; the Convention of 1 July 1964 relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (Corporeal Movables), promoted by the same organization; the Convention of 15 June 1955 on the Law Applicable to International Sales of Goods, promoted by the The Hague Conference on Private International Law; Incoterms 1953, sponsored by the International Chamber of Commerce; General Conditions of Delivery of Goods, 1958, issued by the Council for Mutual Economic Assistance; Various General Conditions for Sale and Standard Forms of Contract elaborated by ECE; the Convention of 15 April 1958 on the Competence of the Forum in the International Sale of Goods; and the Convention of 25 November 1965 on the Choice of Court, sponsored by The Hague Conference.

273 186. In the area of the law relating to the supply and erection of plant and machinery abroad the only formulations are General Conditions (Forms Nos. 188, 188A, 574 and 574A) issued by ECE.

270 187. As regards bills of exchange, a considerable degree of uniformity of law has been achieved by the Geneva Conventions on the Unification of Law relating to Bills of Exchange and to Cheques of 1930 and 1931, sponsored by the League of Nations.

275 188. With respect to bankers' commercial credits, the only formulation available is the Uniform Customs and Practice for Documentary Credits (1962 Revision), sponsored by the International Chamber of Commerce.

276 189. In the area of commercial arbitration, the following should be mentioned: the Geneva Protocol of 1923 and the Geneva Convention of 1927, both sponsored by the League of Nations; the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958; the European Convention on International Commercial Arbitration, sponsored by ECE; the Council of Europe Convention on International Commercial Arbitration and on Uniform Law on Arbitration; the ECAFE Centre for Commercial Arbitration, and the Convention on the Settlement of Investment Disputes between States and Nationals of other States, sponsored by the International Bank for Reconstruction and Development.

## III. Methods, approaches and topics suitable for the progressive harmonization and unification of the law of international trade

### A. Methods

279 190. An analysis of the work thus far done in this area reveals that essentially three methods have been adopted to further the progressive unification and harmonization of the law of international trade.

280 191. The first is the introduction of normative regulations devised

and elaborated within the framework of international treaties and agreements concluded by two or more States. Illustrations of this method are the General Conditions of Delivery of Goods 1958, issued by the Council for Mutual Economic Assistance (CMEA), the Brussels Convention of 1924 on Bills of Lading, the Geneva Conventions on the Unification of the Law relating to Bills of Exchange and to Cheques of 1930 and 1931, The Hague Convention of 1955 on the Applicable Law relating to International Sales of Goods, and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

281 192. The second, which is, in effect, an alternative to the first, is the formulation of model laws to serve as guides for local adaptation, and uniform laws to be incorporated by States into their legislation. Examples of the former are model laws prepared under the auspices of the United International Bureaux for the Protection of Intellectual Property (BIRPI); examples of uniform laws may be found in the practice of the Scandinavian countries acting within the framework of the Nordic Council.

282 193. The third consists in the formulation, normally under the auspices of an international agency, of commercial customs and practices which are founded upon the usages of the international commercial community. Illustrations of the third method mentioned are the Incoterms 1953 and the Uniform Customs and Practice for Documentary Credits, prepared by the International Chamber of Commerce (ICC), and the various General Conditions of Sale and Standard Forms of Contract sponsored by the Economic Commission for Europe (ECE).

283 194. Essential differences exist among the methods described above. The first and second are applied by virtue of the authority of the State, whereas the third is founded upon the autonomy of the will of the parties who adopt it as the regime applicable to the individual transaction at hand.

195. The experience of the past has shown that each of these methods is essential to the unification of the law of international trade and, furthermore, that each complements the other. It is therefore evident that the future development of the law of international trade requires that all of them should continue to be actively pursued.

## B. Approaches

285 196. Until now there has been a variety of approaches to the progressive harmonization and unification of international trade law. One approach encompasses geographically contiguous countries having similar political, economic and legal systems and a comparable stage of economic development. When all these factors are present a considerable measure of harmonization may be achieved, as has happened among the Scandinavian countries belonging to the Nordic Council.

287 197. Unifying measures have also been taken among countries having a similar socio-economic system, regardless of geographical location; this is the case for the members of CMEA which includes nine countries having centrally planned economies, eight in Europe and one in Asia. In other cases there has been a measure of unification among countries located in the same region, regardless of their socio-economic system; this approach has been followed, for example, by European countries in the context of ECE. A degree of unification has also been achieved among countries belonging to common markets and free trade areas which are committed to the integration of their trading areas and institutions; this is the case for the countries belonging to the European Economic Community and for those belonging to the European Free Trade Association.

198. Another approach has been based on the premise that it

would be in the interest of developing countries having a comparable stage of economic development to adopt, on certain subjects, uniform provisions which should be especially geared to the requirements of their economies. This approach was followed in the preparation of the recent Model Law for Developing Countries on Inventions<sup>81</sup> which was elaborated by BIRPI, with the co-operation of the United Nations.

289 199. Finally, steps have been taken to further harmonization and unification on a world-wide scale. Perhaps the most successful example is the 1962 Revision of the Uniform Customs and Practice for Documentary Credits issued by the ICC, which has been accepted in 173 countries and territories.

290 200. All of the foregoing approaches are complementary and any of them may prove to be the most practical for a particular topic, depending on the economic, legal and other factors involved.

291 201. Undoubtedly, it may be easier to make progress in harmonizing national laws and practices when the countries involved have similar legal or socio-economic systems. However, international trade transcends geographical proximity and legal, social or economic affinity. A country often engages in more trade with a country having a different legal or economic system and located in another part of the world than it does with a contiguous country with which it has closer bonds. In such cases only harmonization on a world-wide scale would help reduce the obstacle of a legal nature hampering the flow of trade between those countries.

292 202. It should be stressed that modern commercial life, which has been affected by technological advances with respect to travel and transport and by the rapprochement of different economic systems, lends to require to a great extent harmonization and unification on a broad scale with respect to the law of international trade. The fol-

<sup>81</sup>BIRPI publication 801 (E), Geneva, 1965.

lowing comment made by Professor Tunc, although it refers to the internal legislation of a particular country, is relevant to the present study in that it points out the interdependence of the progressive development of international trade law:

293 "Today France must amend her legislation, knowing that she will have to amend it again tomorrow to comply with the constitution of the Common Market; for at the same time, she may have to amend it to harmonise it, at least in some fields, with the legislations of the seven members of the European Free Trade Association or of the eight members of the socialist council for Mutual Economic Aid; later on, the problem will be of harmonisation with the legislation of the twenty member nations of the Organization for Economic Co-operation and Development, with the seven members of the Montevideo Treaty and with other trade associations in Africa or Asia."<sup>82</sup>

### C. Suitable topics

294 203. In considering topics suitable for harmonization and unification, three general observations should be made. First, whether harmonization is attempted on a world-wide scale or not, it is more easily achieved in technical branches of the law than in subjects closely connected with national traditions and basic principles of domestic law. Thus, harmonization has been most widely accepted in the law of industrial property, transportation by sea, air and land, international banking (bills of exchange and commercial credits) and arbitration.

296 204. Secondly, it should be kept in mind that the unification process is desirable per se only when there is an economic need and

<sup>82</sup>See Andre Tunc, "English and Continental Commercial Law" in Journal of Business Law, (London, 1961), p. 246.

when unifying measures would have a beneficial effect on the development of international trade.

297 205. Thirdly, in addition to their direct impact, unifying measures tend to have what has been called a “radiation” effect.<sup>83</sup> This occurs when, for example, a State which is not a party to an international convention decides to apply the principle on which the convention is founded, or when a unifying technique used in one international instrument is subsequently made part of another. Thus, as has been previously noted (paras. 42-43), the principle that the seller's law is the presumptive law in conflict problems arising from the international sale of goods, which was incorporated in The Hague Convention of 15 June 1955, has been followed with respect to ECE's General Conditions of Delivery of Goods and General Conditions, Forms Nos. 188, 574 and 730.

298 206. It would be premature at this stage to make specific suggestions regarding desirable priorities in the future work of unification, or to identify topics particularly suitable for world-wide or other action.

299 207. Nevertheless, most unification activities have been in the areas mentioned in paragraph 184 above. Further progress in those areas could be made, for instance, by encouraging wider participation in the conventions relating to the international sale of goods, bills of exchange and arbitration, and wider adoption of certain contractual forms and definitions of frequently used commercial terms. In addition, it would be beneficial to international trade if more efforts were made in the direction of unification on such topics as problems of agency law, including those relating to commission agents and brokers; the law relating to joint ventures by bodies incorporated in different countries; rules relating to corporations entering into foreign trade relations; and the general law of contract,

<sup>83</sup>Ibid., p. 240.

as far as it is relevant to international trade, e.g., problems of frustration and force majeure, or of time limits and prescription.

#### **IV. Role of the United Nations in the progressive harmonization and unification of the law of international trade**

300

##### **A. Progress and shortcomings of the work in the field of harmonization and unification of the law of international trade**

301

208. The preceding survey of the work done up to now in the unification and harmonization of the law of international trade shows a picture of some progress but at the same time some significant shortcomings.

302

209. Owing primarily to the efforts of the “formulating agencies”, there has been a degree of unification and harmonization, especially on such subjects as the international sale of goods, bills of exchange, bankers' commercial credits, international maritime trade, and commercial arbitration.

303

210. On the other hand, an objective evaluation of the efforts made in this field cannot fail to reveal the following main shortcomings:

304

(a) The progress made in the unification and harmonization of the law of international trade has been rather slow in relation to the amount of time and effort expended on it. The relatively modest results obtained up to now are attributable to a number of factors, such as the difficulties inherent in any attempt to bring about changes in national legislation and practices, and the limited membership and authority of formulating agencies. As a consequence, the completion of the technical work of prepar-

305

ing draft conventions, model laws or uniform laws has often failed to culminate in an international conference or in the adoption of uniform legislation. Where conventions have been adopted, generally speaking only a small percentage of the present Members of the United Nations have become parties.

306

(b) The developing countries of recent independence have had the opportunity to participate only to a small degree in the activities carried out up to now in the field of harmonization, unification, and modernization of the law of international trade. Yet those are the countries that especially need adequate and modern laws, which are indispensable to gaining equality in their international trade.<sup>84</sup> In many of these States the prevailing legal system was introduced before their independence by the metropolitan countries; often the provisions thus received are unsuitable to their present stage of economic development or to the requirements of newly independent states.<sup>85</sup> The unification process in the field of in-

<sup>84</sup>As the representative of Hungary said, "It was particularly important for them [the developing countries] that the law of international trade should be updated and guarantee the highest security so that they would not be at the mercy of more experienced trade partners." (See Official Records of the General Assembly, Twentieth Session, Sixth Committee, 89th meeting, para. 8.)

<sup>85</sup>The technique of law reception is not a phenomenon which relates solely to the recent history of newly independent States. The legal systems of some countries or territories which in the past were dependencies of European States are still influenced by the law of the former colonial Powers. Thus the law in almost all states of the United States is derived from English law; many Latin-American States have received Spanish law; the Province of Quebec in Canada and the State of Louisiana in the United States have received French law. Furthermore, as between sovereign States the problem of adaptation to modern conditions has sometimes been dealt with by the same technique of law reception. Thus, for example, modern Greek and Japanese law have received German law and modern Turkish law has received Swiss law.

ternational trade law would be a step in the direction of remedying this situation. As to the attitude of new States towards playing a more active role in this endeavour, the following words written by an authority on African law are significant:

"African countries have not opted out of discussions on world unification of laws - quite the contrary; I am sure that they wish to be more closely and directly involved in such discussions in the future than they have been in the past."<sup>86</sup>

307

(c) None of the formulating agencies commands worldwide acceptance; none has a balanced representation of countries of free enterprise economy, countries of centrally planned economy, developed and developing countries. In some cases, those agencies have a membership confined either to countries of centrally planned economy (e.g. CMEA) or to countries of free enterprise economies (e.g. the ICC); in other instances, members must belong to a specific region (e.g. the ECE). In the case of UNIDROIT, although there is no geographical limitation on membership, the present membership is predominantly European.

308

(d) There has been insufficient co-ordination and co-operation among formulating agencies. Therefore, their activities have tended to be unrelated, and a considerable amount of duplication has resulted. The following observations made some years ago by the late Professor H.C. Gutteridge still seem relevant:

309

"The most urgent problem of all, however, is that of the waste of effort and confusion that has, at times, been caused by the existence of competing agencies engaged in the work of unification.

310

<sup>86</sup>See A.N. Allott, "Towards the Unification of Laws in Africa," in *International and Comparative Law Quarterly* (London), vol. 14, 1965, p. 389.

The remedy for this state of affairs would seem to be the establishment of a rallying ground for unificatory activities - a kind of international clearing house - which would co-ordinate and supervise activities of this nature and also facilitate the collection of any information that might be required, either from governmental or other sources. ... it would be possible, in this way, to avoid the overlapping of attempts to achieve uniformity, and to discourage the ill-timed, or over-ambitious, projects which are largely responsible for the paucity of success which has hitherto characterised the movement for the unification of law.”<sup>87</sup>

311 **B. Desirable action to remedy the existing shortcomings**

312 211. The General Assembly, in the preamble to resolution 2102 (XX), has recognized that “conflicts and divergencies arising from the laws of different States in matters relating to international trade constitute an obstacle to the development of world trade” and has expressed its conviction that “it is desirable to further co-operation among the agencies active in this field and to explore the need for other measures for the progressive unification and harmonization of the law of international trade”.

313 212. To remedy the shortcomings described above, several measures such as the following should be taken. The process of harmonization and unification of the law of international trade should be substantially systematized and accelerated. This would entail a concerted effort to secure a wider participation in existing international conventions and a wider adoption of uniform legislation, where such conventions and uniform laws reflect the present requirements of world trade, as well as a wider use of standard

<sup>87</sup>See H.C. Gutteridge, *Comparative Law*, 2nd ed. (Cambridge, University Press, 1949), pp. 183-184.

trade terms, provisions and practices. It would also entail action towards further unification and modernization of legal techniques in this area, such as the adoption of new international conventions and uniform laws, codification of existing rules and trade practices and the dissemination of information on up-to-date methods and solutions. In addition, it would be desirable to secure a broad participation of the developing countries of recent independence in the progressive development and codification of the law of international trade; this would facilitate the adoption by those countries of laws and other measures adequate for the protection of the interests of their international trade transactions. Finally, it would be appropriate to bring about a close co-ordination of the activities of the existing formulating agencies, regardless of whether their members belong to one or another economic or legal system.

**C. Role of the United Nations**

315 213. It should now be considered whether it would be desirable for the United Nations to assume responsibilities in this field and, if so what should be the extent of such responsibilities. In this connection, the following questions should be examined.

**1. Is the Unification and Harmonization of the Law of International Trade an Appropriate Subject for United Nations Action?**

317 214. Action by the United Nations for the purpose of removing or reducing legal obstacles to the flow of international trade would be properly within the scope and competence of the Organization under the terms of Articles 1 (3) and 13, Chapters IX and X of the United Nations Charter. In particular, such action would be fully consistent with General Principle Six of the United Nations Conference on Trade and Development (UNCTAD) which reads: “Inter-

national trade is one of the most important factors in economic development. It should be governed by such rules as are consistent with the attainment of economic and social progress and should not be hampered by measures incompatible therewith.”

318 215. As previously mentioned in this report, the United Nations has already been engaged in some activities in the field of unification and harmonization of the law of international trade. But so far, there has been no attempt to survey the field as a whole in order to co-ordinate the activities of the different United Nations organs concerned and select the most suitable subjects. Consequently, the choice of subjects has been largely accidental and the activities often unrelated to one another.

319 216. What the United Nations has accomplished in the promotion of the law of international trade is insignificant compared with what it has done in promoting economic and social development. Although there is an increasing awareness that a modern legislative framework is the necessary foundation for sound economic and social progress, there is still what may be called a “legal lag”.<sup>88</sup> There is no doubt, therefore, that United Nations action would be both appropriate and desirable.

## 2. Would a United Nations Participation in this Activity Unnecessarily Duplicate the Work of Existing Agencies and Reduce or Abolish their Usefulness?

217. One of the main reasons for the relatively slow progress made in the past has been the limited membership and authority of formulating agencies. This has resulted in a disproportion between the number of draft instruments prepared by formulating agencies and their acceptance by States. In view of its world-wide membership and authority, the United Nations would provide a most appropriate forum for convening international conferences for the adoption of conventions. Where unification and harmonization take the form of recommendations for the adoption of uniform laws and standard practices, such recommendations would be addressed directly to all Member States of the United Nations, thus increasing the chances of broad acceptance.

218. Rather than reducing the usefulness of existing formulating agencies, an active United Nations interest and participation in this work would tend to broaden their scope and enhance their activities. For example, some of the draft instruments prepared in the past by formulating agencies could be revised in the light of present requirements and could eventually be submitted to the United Nations for action; the Organization could request formulating agencies specializing in different subjects to deal with specific topics and could utilize those agencies' expert advice in general. Accordingly, it may be expected that United Nations participation in this

<sup>88</sup>The representative of the Netherlands said, “The United Nations was already in the middle of the Development Decade, while the United Nations Conference on Trade and Development had initiated an ambitious programme of co-operation for economic development and the expansion of international trade. It was therefore important that the development of the law should not lag behind technical progress and material achievements ...”. (See Official Records of the General Assembly, Twentieth Session, Sixth Committee, 896th meeting, para. 13).

field would increase the usefulness of existing formulating agencies, and improve the chances of bringing their work to a successful conclusion.

323 **3. Would the United Nations be in a Position to Make a Significant Contribution to Furthering Unification on a World-Wide Scale or Otherwise?**

324 219. As mentioned above (paragraphs 196 to 202), the choice of the approach to be followed in bringing about unifying measures depends on a variety of legal, economic and social factors. While world-wide unification may be desirable and feasible for certain topics, a different approach may commend itself with respect to others.

325 220. As the United Nations comprises practically all the countries of the world, representing the various legal, economic and social systems as well as all stages of economic development, it would be in the best position to examine the question of the choice of approach (world-wide, regional or other) in the light of the relevant circumstances, acting as a kind of international clearing house for unification activities. The United Nations would also be in the best position to determine, for any topic, which method of unification should be adopted (international convention, model law, uniform law, harmonization or codification of commercial practices) and to provide the most suitable forum for unifying measures on a world-wide scale.

326 **4. Should the Functions of the United Nations be Confined to Co-Ordination or Should they Also Encompass Formulation?**

327 221. As the need for better co-ordination in this area is generally

acknowledged, it seems clear that the United Nations could perform a useful role in promoting contacts and furthering collaboration between the existing formulating agencies, exercising some kind of supervision over their activities and initiating unifying measures. The performance of these functions would require the ability to exercise judgement, inter alia, on which projects and draft instruments should be carried to a conclusion and which should be revised and which shelved, as well as on the respective roles of existing formulating agencies. If a sufficient expertise to perform these tasks is to be acquired, it would be necessary to create a United Nations organ consisting of highly qualified authorities in the field, including experts from developing countries who would thus have the opportunity to participate actively in the work of unification. While co-ordination should be the primary function of such a United Nations organ, it would appear desirable not to confine it to a co-ordinating role but to authorize it, when appropriate, to perform formulating functions as well.

**5. Is There a Realistic Chance of Success or is the Task too Difficult for Tangible Results?**

329 222. Since one of the purposes of unification and harmonization is to bring about changes in national laws, the difficulties of this endeavour should not be underestimated. However, the matters relating to the unification of the law of international trade are primarily of a technical nature. It should therefore be less difficult to adapt national rules to the needs of international trade, than to unify rules on such matters as family law, succession, personal status, and other subjects deeply rooted in national or religious traditions. The common interest of all countries in removing or reducing obstacles to international trade should also act as an incentive towards progress.

223. Another difficulty that has been mentioned is that excessive

zeal might lead to unification at the lowest common denominator. There is no merit in unification if it results in the adoption by a group of States of the legal concepts acceptable to the least progressive among them. Nor is there any merit in formulating a convention or uniform law on a subject which would not appreciably benefit international trade. Accordingly, it is most important that any attempt at unification and harmonization should be preceded by a thorough search for the right and ripe topics. It is essential that the topics should be selected in close collaboration between legal experts and trade experts familiar with the requirements of international trade and its priorities, and aware of what results can be realistically achieved.

331 224. Progress in this field is bound to be rather slow, but the pace of such progress can be substantially accelerated if the United Nations assumes an active role and if Member States give it sustained and continuing support.

#### 332 **D. Establishment of a United Nations Commission on International Trade Law**

333 225. There is no existing United Nations organ which is both technically competent in this field and able to devote sufficient time to such a complex and long-term endeavour. The General Assembly may, therefore, wish to consider the possibility of establishing a new commission which might be called the "United Nations Commission on International Law".

334 226. It would be essential to assure the most active and broadly based support of Governments, and at the same time to provide for the participation of recognized authorities in this field of law. It would, therefore, appear advisable to provide that the membership of such a commission should be composed of an appropriate number of States, elected by the General Assembly, and to pro-

vide, further, that the representatives of these States, appointed by them to serve on the commission, should be persons of eminence in the field. In this connection, it may be recalled that a similar, but no identical arrangement was adopted under the terms of Economic and Social Council resolution 903 C (XXXIV) of 2 August 1962, dealing with the establishment of the Committee on Housing, Building and Planning. The Committee was "composed of eighteen States Members of the United Nations, elected by the Council ..., the representatives on this committee to be designated by the Governments of these States in agreement with the Secretary-General, with a view to achieving, as far as possible, a balanced coverage of required expertise ...". This arrangement is similar to the one suggested above.

227. It is suggested that the commission should have the following functions: to further the progressive harmonization and unification of the law of international trade by:

(a) Co-ordinating the work of organizations active in this field and encouraging co-operation among them; 336

(b) Promoting wider participation in existing international conventions, and wider acceptance of existing model and uniform laws; 337

(c) Preparing, and promoting the adoption of, new international conventions, model laws and uniform laws, and the codification and wider acceptance of international trade terms, provisions, customs and practices; 338

(d) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade; 339

(e) Collecting and disseminating information on national 340

legislation and modern legal developments in the field of the law of international trade;

341 (f) Maintaining liaison with UNCTAD, the Economic and Social Council and other United Nations organs and specialized agencies concerned with international trade;

342 (g) Taking any other action as it may deem useful to achieve its purposes.

343 228. The question of whether, and to what extent, the commission would deal with unification of conflict rules, in addition to unification of substantive rules, might be for the commission itself to consider at the appropriate time.

344 229. Because the work of the commission would be of an essentially technical nature, including a certain amount of legal drafting, it would seem desirable to have a membership of eighteen, and in any event not more than twenty-four. The commission should have an adequate representation of countries of free enterprise and centrally planned economies, and of developed and developing countries.

345 230. As the functions of the commission pertain to the field of law and trade, it must be considered whether the commission should report directly to the General Assembly or to UNCTAD which would, in turn, report to the General Assembly. Although important trade aspects would be involved requiring close liaison with UNCTAD, it seems clear that the bulk of the work would be of a technical legal nature. In these circumstances, it may be appropriate that the commission should report directly to the General Assembly, so that its activities would be considered by the Sixth (Legal) Committee at an early stage. The reports would be submitted simultaneously to UNCTAD for its comments. Any comments that UNCTAD may wish to make would be transmitted through the Economic and Social Council for consideration by the General Assembly and by the

Sixth Committee, when the reports of the commission are examined. Such comments might, as appropriate, contain recommendations to the General Assembly on topics for inclusion in the programme of work of the commission. This arrangement would not only ensure the most expeditious and thorough consideration of the commission's work but also the indispensable close liaison with UNCTAD. It would also provide the commission with the central role and the appropriate level necessary for the effective performance of its functions.

231. The fourth session of the Trade and Development Board of UNCTAD, at its 113th meeting on 23 September 1966, considered the question of the progressive development of the law of international trade. The section of the report of the Trade and Development Board (A/6315) dealing with this matter is reproduced in annex I. 346

232. In view of the vast scope and complexity of the commission's work it would be necessary to establish, within the Office of Legal Affairs, a new secretariat unit comprising three or four qualified officers, devoting its full time to work in this field. 347

233. In order to render effective assistance to the commission, the secretariat unit should be familiar with the different major legal systems of the world and with the problems of countries at various stages of economic development. 348

234. The functions of the unit would be: 349

(a) To provide the secretariat for the sessions of the commission and for international conferences and meetings of experts on the law of international trade; 350

(b) To assist the commission in its co-ordinating functions by: 351

(i) Preparing studies of the work done in the past and of the 352

current work of formulating agencies, in order to ascertain the stage reached with respect to the different topics, and to examine what further action towards unification and harmonization is desirable;

353 (ii) Maintaining appropriate liaison with the secretariats of UNCTAD, other United Nations organs, specialized agencies and other interested inter-governmental and non-governmental organizations, as required in the performance of the commission's functions;

354 (c) To prepare studies and recommendations on problems concerning the unification and harmonization of the law of international trade, including comparative analyses of national legislation, studies and research on particular topics at the request of the commission and, when practicable, of other United Nations organs;

355 (d) To organize and maintain a comprehensive collection of national legislation and treaties pertaining to the law of international trade, and of documentation on modern developments in this field, and to provide information thereon to the commission, to other interested United Nations organs and to States, within the limits of available resources;

356 (e) To provide services in connection with technical assistance activities in this field, within the limits of available resources.

357 **E. Financial implications of the establishment of a United Nations commission on international trade law**

358 235. This study of the progressive development of the law of international trade has been prepared in response to General Assembly

resolution 2102 (XX), in which it was requested that the Secretary-General submit a report to the General Assembly examining what has been accomplished, what might be accomplished, and what institutions might be utilized in promoting the goal of harmonizing and utilizing the law of international trade. In this report it is suggested that the General Assembly may wish to consider the possibility of establishing a new commission, which might be called the "United Nations Commission on International Trade Law". The Secretary-General would be prepared to submit the financial implications of the establishment of such a commission at the appropriate time after Member States have had an opportunity to consider what course of action it would be most appropriate for the United Nations to follow and when their views and wishes on the details of any possible new arrangement are more clearly known.

\* Also known as the Council for Mutual Economic Aid and Comecon.

360

## Metadata

### SiSU Metadata, document information

**Document Manifest @:**

[http://www.jus.uio.no/lm/un.sg.report.itl.development.1966/sisu\\_manifest.html](http://www.jus.uio.no/lm/un.sg.report.itl.development.1966/sisu_manifest.html)

**Title:** Progressive Development of the Law of International Trade: Report of the Secretary-General of the United Nations, 1966

**Creator:** United Nations (UN)

**Rights:** Copyright (C) 1966 United Nations (UN)

**Subject:** UNCITRAL formative document

**Publisher:** SiSU <http://www.jus.uio.no/sisu> (this copy)

**Date:** 1966

**Topics Registered:** United Nations:trade:report

#### Version Information

**Sourcefile:** un.sg.report.itl.development.1966.sst

**Filetype:** SiSU text 2.0

**Source Digest:** SHA256(un.sg.report.itl.development.1966.sst)=e3994407-74ac98bd0e09691e2feb094462d07323b8e32f837ec098f037d0a597

**Skin Digest:** SHA256(skin\_lm.rb)=5acda64a9532f9ef6b71693da2b471d4efac2f23-a8499e68de066eec8ea9b8e9

#### Generated

**Document (dal) last generated:** Wed Sep 01 14:56:49 -0400 2010

**Generated by:** SiSU 2.6.3 of 2010w30/3 (2010-07-28)

**Ruby version:** ruby 1.8.7 (2010-08-16 patchlevel 302) [i486-linux]