UNCITRAL -
A NEW UNITED NATIONS LEGAL BODY

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1. Introductory Remarks

The United Nations Commission on International Trade Law (UNCITRAL) held its first session at United Nations Headquarters in New York from 29th January to 25th February, 1968. The Commission is the second permanent legal body established by the United Nations, 19 years after the decision to create an International Law Commission. This expansion of United Nations activities in the legal field to cover the law of international trade is an important new development in international legal co-operation. It will point to new procedures and enlist new ideas, even though much of UNCITRAL's work must be based on that already carried out, or planned, by existing legal bodies — intergovernmental or unofficial — and will carry further some of the tasks already undertaken by other United Nations organs that are active in the economic sphere.

In the resolution establishing the Commission 1) the General Assembly laid down that it »shall have for its object the promotion of the progressive harmonization and unification of the law of international trade«. The term »law of international trade« may for all practical purposes be defined, in words of the Secretary-General's report to the 21st Session of the General Assembly: »as the body of rules governing commercial relationships of a private law nature involving different countries«.2)

2. General Background

The term »law of international trade« in the definition just quoted has been transposed into »international trade law« in the nomenclature of the Commission, apparently for reasons of euphony. Al-

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though this latter term might lack in precision, it seems safe to assume that it will find wide acceptance, and that, by force of word power, it will form a guidepost for the Commission and for independent scholars in stressing the international aspects of the law of international trade, and by signifying the concern of the international community for its development.

There is sound historical justification for this choice of emphasis in terminology. The customs and practices of merchants from all parts of Europe led to the formulation of the mediaeval Lex Mercatoria, which applied to merchants ratione personae in their commercial dealings. Generally speaking, this body of law governed commercial transactions regardless of national boundaries, and regardless of the territorial or personal claims to jurisdiction of other systems of law. The Lex Mercatoria covered continental Europe and the Mediterranean shores, and in some form extended as far as Scandinavia. It applied in England, and was later received into the Common Law.

Later, with the growing strength of national states, and with the increasing interest of Governments in commercial matters, national legislation developed to disturb what may be called the transnational unity of the Lex Mercatoria. Differing national interests, and later, contrasting ideological views, led to variances in outlook, in stress, and in institutions. As European traders established relations with other continents, they met with new cultural patterns, with legal systems that had their own origins and social terms of reference. The force of economic laws to some extent superimposed the various Western commercial practices and rules on these legal systems.

But according to the nature of things, the dissimilarities could not become too great. The fundamental realities are more or less the same for all who engage in commerce: they buy and sell, and most merchants are both sellers and buyers. When commodities have to be shipped from one place, or one country, to another, the technicalities of transport, of quality control, of payments, of claims and of their settlements, impose the same general sort of solution to problems that are roughly identical in most societies.

Farseeing men realised that a certain measure of uniformity should be encouraged, on an international level, and sophisticated commercial codes were developed in several countries under the pressure of identical economic situations. The codifications that produced the most practical results set the pattern for the others, or were received in their entirety, or assimilated, in areas where the prevailing legal regime had a lower level of refinement. Internationally,