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Progressive development of the law of inter-
national trade (*continued*). 287

Chairman: Mr. Vratislav PĚCHOTA
(Czechoslovakia).

AGENDA ITEM 88

Progressive development of the law of international
trade (*continued*) (A/6396 and Corr.1 and 2 and Add.1
and 2, A/C.6/L.613 and Add.1 and 2)

1. Mr. ABDULLA (Sudan) said that his delegation fully supported the conclusions reached by the Secretary-General in his report on the progressive development of the law of international trade (A/6396 and Corr.1 and 2) and for that reason had been glad to co-sponsor the draft resolution contained in document A/C.6/L.613. The purpose of that resolution was to assist the agencies responsible for the progressive development of international trade law by harmonizing and, wherever possible, unifying the rules of that law, so that conflicts between national legal systems could be prevented and obstacles to international trade removed. His delegation appreciated the efforts that were being made by all organizations, particularly The United Nations Conference on Trade and Development (UNCTAD), but it felt that those organizations were not sufficiently specialized for the task of harmonizing the law of international trade on a world-wide scale. It agreed with the Secretary-General that the time had come for the United Nations to take an active and guiding role in the progressive harmonization of international trade law in a manner that would not interfere with the valuable activities of the existing organizations.

2. The harmonization of international trade law would help his country and other developing countries to formulate their laws in a way that would enable them to reach the standard of the more fully developed countries and to enjoy the advantages in trading with those countries that they had lacked in the past. His country therefore attached special importance to the proposal for the establishment of a United Nations commission on international trade law. The new commission would serve to narrow the gap between the legal practices of countries with centrally planned economies and those of countries with free enterprise economies and would help both the developed and the developing countries to gain a better understanding of the legal problems arising in their international trade relations. It would not be easy to do away with the

existing practices of those two groups, but because of the close contacts between highly qualified experts from all countries, it should be possible to establish better mutual understanding and, consequently, a closer co-ordination of international trade practices.

3. For that reason, he supported the suggestion that the proposed commission should consist of thirty members. His delegation felt strongly that the commission should be representative of the wide range of systems throughout the world and in particular guarantee full representation for the developing countries.

4. Mr. PIRADOV (Union of Soviet Socialist Republics) said that his delegation attached great importance to the item under discussion and considered that the time had come for the United Nations to play a more active part in the legal regulation of international trade. Trade was an important factor in economic development, social progress and the development of international understanding. There had always been a direct connexion between the Soviet Union's efforts to achieve peaceful coexistence and its attempts to develop trade relations with all countries regardless of their social and economic systems or levels of development. As a result of economic expansion by the socialist countries and decolonization, conditions were now favourable for the development of world trade, which in turn could help to promote peaceful coexistence.

5. There were still, however, many artificial obstacles to the development of trade, due principally to the activities of monopolies, neo-colonialism, the existence of closed economic groupings and certain irregularities left over from the cold war. The recommendations of UNCTAD on the normalization of international trade were being put into effect very slowly. There were also legal barriers created by the lack of uniform rules on technical procedures and contracts. Trade relations were traditionally regulated by domestic law, which differed considerably from State to State. Attempts to unify and harmonize trade law had therefore been made by many international bodies, including the Economic Commission for Europe (ECE) and The Council for Mutual Economic Aid (COMECON). The General Conditions of Delivery of Goods issued by the latter body in 1958 to replace a multiplicity of bilateral arrangements had passed into the national law of all COMECON member States. Other intergovernmental and non-governmental organizations, such as the International Institute for the Unification of Private Law (UNIROIT) and the Hague Conference on Private International Law also dealt with the problem. But their activity was usually conducted on a regional basis without the necessary

co-ordination. It was time, therefore, for new efforts to achieve harmonization and unification, in which the United Nations should play a leading role. In doing so, it would be acting in accordance with Article 3, paragraph 3, Article 13 and Chapters IX and X of the Charter. It should be entrusted with co-ordination of all activities in the field and could itself make a direct contribution. His delegation therefore supported the proposal for the establishment of a United Nations commission on international trade law contained in the draft resolution in document A/C.6/L.613, on which it might comment in detail later.

6. Mr. RESICH (Poland) said that the progressive development of the law of international trade was essential for the establishment of peaceful and normal relations between nations in conformity with the Charter. Currently, international trade was hampered by a number of difficulties caused by the existence of different systems of law. That was particularly apparent in the free enterprise States, some of which followed the Roman system of law, whereas others were based on Anglo-Saxon or Germanic law. In addition, those States often belonged to different economic blocs. One of the duties of international trade law, therefore, should be to unify the principles observed within that group of States. Another duty should be to unify the principles observed among the socialist countries, which were based on new legislative systems. Still a third duty should be to unify the principles governing trade relations between the free enterprise States and the socialist States—a task that should be made easier by the fact that the new legislative systems of the socialist States allowed for broader international relations. In that connexion, he noted that the Secretary-General, in his report (see A/6396, para. 22), had quoted the following statement by the Polish jurist, Professor Henryk Trammer: "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". A further task would be to make it possible for the developing countries to accept that system of international trade law by having it meet their current requirements and offer none of the difficulties connected with the complicated legal systems of the developed countries.

7. Efforts to unify international trade law could take the form of multilateral conventions, such as the Geneva Conventions on the unification of the law relating to bills of exchange (1930) and those establishing a uniform law relating to cheques (1931), which were binding on States, or of collections of trade customs and practices, such as those prepared by the International Chamber of Commerce (ICC), which were not binding. In his opinion, unification should be sought preferably through international agreements, inasmuch as that was the only way in which peremptory legal norms could be unified. The United Nations could play an important part in that effort by promoting the conclusion of multilateral agreements aimed at the unification of trade law. For that reason, his delegation fully supported the proposal in the draft resolution contained in document A/C.6/L.613 to establish a United Nations commission on international trade law. He emphasized that that

commission, if its work was not to be academic and divorced from the needs of the contemporary world, would have to co-operate closely with UNCTAD.

8. With respect to what had been accomplished so far in the unification of international trade law, he drew particular attention to the work of the International Chamber of Commerce, the United Nations Economic Commission for Europe, the International Institute for the Unification of Private Law and the Council for Mutual Economic Aid. He also drew attention to the two important conventions on commercial arbitration: the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, concluded in New York in 1958, and the 1961 European Convention on International Commercial Arbitration.

9. He expressed the hope that the United Nations would participate as a co-ordinating body in the unification of transport and insurance law, as well as the law of industrial property. Those States Members of the United Nations that had not yet acceded to the international conventions on arbitration should be urged to do so.

10. Mr. YASSEEN (Iraq) said that international trade, which was becoming increasingly important, had long since crossed political borders and currently depended on more than one juridical order. The progressive development of the law of international trade, with a view to adapting it to reality, was therefore an obvious necessity. Accordingly, his delegation fully supported the Secretary-General's suggestion for the establishment of a United Nations Commission on International Trade Law. There was no existing organization, either within or outside the United Nations, that was equipped to deal with international trade law on a truly world-wide basis. He fully appreciated the excellent work being done by UNIDROIT and the Hague Conference on Private International Law but pointed out that those organizations were still far from being as representative as the United Nations. A commission appointed by the United Nations, in which all countries could participate, would be able to ensure close co-operation among all United Nations bodies concerned with trade problems, particularly UNCTAD and the Economic and Social Council. The task of that commission should be twofold: to serve as a co-ordinating body and to formulate uniform rules of trade law. In performing its function as a co-ordinating body, it would have to take into account the work being done by other governmental and intergovernmental organizations in the same field and find a common denominator between them. In formulating rules of international trade law, on the other hand, its task would be of a creative rather than a co-ordinating nature; it would have to fill the gaps in the existing law on the subject. He noted that the Secretary-General had stated (see A/6396, para. 228) that 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. His delegation, however, had already expressed the view, which was shared by the delegation of Hungary, that the commission's work would be incomplete if it failed to deal with unification of conflict rules, inasmuch as differences between States

were bound to arise whenever there were conflicts of law. In conclusion, he hoped that the commission's work of unification would reflect the legal systems of both the developed and the developing countries and thus contribute to the establishment of a truly international, if not universal, system of international trade law.

11. Mr. SINCLAIR (United Kingdom) paid tribute to the authors of the comprehensive report in document A/6396. The report presented a full and clear picture of the activities carried out by existing organizations and institutions. It described the real contribution of UNIDROIT and the Hague Conference on Private International Law, the important progress made by the United Nations family of organizations on certain specific topics, both on a world-wide and on a regional level, and the work of regional intergovernmental organizations and of non-governmental organizations. The work of the non-governmental organizations concerned with international trade law had an importance which could not be overestimated. International custom was one of the principal sources of the law of international trade. It had been defined as consisting of commercial practices so widely used that business men expected their contracting partners to conform to them. The other main source of the law of international trade was international legislation—either international conventions or uniform laws for direct incorporation into national legislation.

12. The diversity and range of the activities described in the report seemed to suggest a real need for steps to co-ordinate them. That was the primary purpose that the proposed United Nations commission on international trade law could most suitably fulfil. There were already a number of formulating agencies currently engaged in detailed projects, and the proposed commission would want to make maximum use of their services. His Government had not had much time to reflect on the matter, but, in general, it supported the recommendations set out in paragraphs 225-230 of the report.

13. A valuable function that the proposed commission could perform would be to promote a wider recognition of the advantages to be obtained from the harmonization and unification of the law of international trade. It could inject a new sense of purpose and urgency into the work being carried out and could encourage Governments to focus their attention on those problems. It was the hope of his delegation that as a result those Governments which had not so far participated in the work of existing formulating agencies would be encouraged to do so.

14. He wished, however, to sound a note of caution. In this field, quick and easy results were not to be expected. As paragraphs 196-199 of the report indicated, unification among States having broadly similar legal and economic systems was easier to obtain than unification on a world-wide scale. Although it should be possible to promote wider acceptance of international conventions, unification inevitably involved changes in national laws difficult to bring about. Attempts to achieve unification on a world-wide scale might result in a document that simply set forth the different views. Accordingly, he agreed entirely with the recommendation in paragraph 223 of the

report that the selection of the topics should be done in close collaboration between legal experts and trade experts familiar with the requirements of international trade and its priorities, and aware of the results that might realistically be achieved. The proposed commission should ensure that topics were taken up in the proper order and should avoid duplication of the work of existing organizations.

15. The draft resolution in document A/C.6/L.613 contained many points with which his delegation was in accord. He wished, however, to offer two suggestions for improving the text. In operative subparagraph 8 (e) the words "including case law" should be inserted after the phrase "modern legal developments", inasmuch as substantial legal developments might take place, particularly in the common law countries, through the evolution of case law. The word "consult" in operative paragraph 10 might be understood as implying only a routine exchange of views. Yet the Commission might wish to use the services of particular organizations or experts in connexion with particular projects. Accordingly, he suggested that the words "or use the services of" should be inserted between the words "consult with" and "any" and that the words "or the use of such services" should be inserted between the words "consultation" and "might". The draft resolution envisaged the immediate establishment of the proposed commission. His Government considered it appropriate for the General Assembly to establish the commission as soon as practicable but thought that it might be best to defer the election of the commission's members until the twenty-second session in order to permit further consultations concerning its size and composition. His delegation would reserve its position on the financial implications of the draft resolution until the Secretariat had submitted the requisite statement.

16. Mr. HOUBEN (Netherlands) said that the need to simplify and facilitate international commercial relations had long been recognized. The Secretary-General's report contained an excellent analysis of the work done thus far to further the law of international trade through the harmonization and unification of national law and the formulation of rules governing conflicts of law. As his delegation had said when the item was discussed in the Sixth Committee at the twentieth session of the General Assembly (896th meeting), it was important that the development of the law of international trade should not lag behind technical progress and material achievements. It therefore commended the Secretary-General for his comprehensive report, which paved the way for appropriate action to achieve that objective.

17. The Sixth Committee must clearly define the scope of the activities that the United Nations itself might undertake, over and above the work being done by specialized agencies, intergovernmental organizations and non-governmental organizations. It noted that the heads of UNIDROIT and the Hague Conference on Private International Law, in their introductory statements (946th meeting), had emphasized the open character of their respective institutions and recent developments in their activities which had considerably increased the significance of their work. At the preceding session of the General Assembly, the Canadian

representative had orally proposed in the Sixth Committee the deletion from subparagraph 1 (c) of the draft resolution then under discussion of the words "centralizing, coordinating or operational" describing the responsibilities that might be given to United Nations organs.^{1/} That proposal had been adopted in order not to predetermine the direction that the inquiry requested of the Secretary-General should take. The ideas represented by the deleted words were again before the Committee in the Secretary-General's report and in the draft resolution (A/C.6/L.613). The Committee must now explore those ideas so as to avoid any difficulty of interpretation in the future.

18. The report referred to the United Nations as having the task of co-ordinating and stimulating the development of international trade law. Unquestionably, the work being done in the development of international trade law by the United Nations and by other intergovernmental organizations was in need of greater co-ordination. His Government agreed that the United Nations was best suited to bring about improvements in international co-operation, if only by functioning as an international clearing house. At the same time, he would like the sponsors of the draft resolution (A/C.6/L.613 and Add.1 and 2) to clarify the meaning of the seventh preambular paragraph, in particular, the word "substantially". His own delegation assumed that the purpose of United Nations action would not be to set the pace for existing intergovernmental organizations. In its view, the word "co-ordinated" in that context could not be interpreted as expressing the idea of "centralizing responsibility" introduced at the previous session.

19. The formulating function that the Secretary-General's report suggested should be entrusted to the United Nations seemed to fall within the scope of what had been described at the previous session as "operational responsibility". Subparagraph 8 (c) of the draft resolution entrusted the proposed commission with the task of "preparing" 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. It was of the utmost importance that that task should be done, as subparagraph 8 (c) stated, in collaboration with the organizations operating in that field. His delegation considered it absolutely necessary to establish the closest possible ties between the proposed commission and UNIDROIT and similar agencies. So that the commission might avail itself of all the expert knowledge that the existing agencies had assembled and avoid overlapping of activities, representatives of the organizations concerned should take part in all discussions in which topics for study were selected. In order to ensure such collaboration, his delegation suggested the deletion of the words "where appropriate" in subparagraph 8 (c). The wording of paragraph 11 of the draft resolution also left some question as to whether the commission would, in fact, establish working relationships with the organizations concerned with the harmonization and unification of international trade law and, in

particular, with UNIDROIT and the Hague Conference on Private International Law. The wording of paragraph 11 should be more positive. He drew attention to the agreement concluded between the United Nations and UNIDROIT in pursuance of Economic and Social Council resolution 678 (XXVI) and suggested that a similar exchange of letters between the commission and UNIDROIT might be effected later.

20. His delegation agreed that the proposed commission should have the function of promoting the adoption of conventions and laws and the codification and wider acceptance of practices, as provided in subparagraph 8 (c) of the draft resolution. The commission could perform an important task by participating in the effort to secure wider participation in existing international conventions. He referred in particular to the 1964 Convention relating to a Uniform Law on the International Sale of Goods (Corporeal Movables) and the 1964 Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (Corporeal Movables), which had been signed by twelve countries. It seemed entirely possible for the commission to participate closely in the activities envisaged in Recommendation No. II adopted by the Diplomatic Conference on the unification of law governing the international sale of goods, held at The Hague in 1964, according to which UNIDROIT should establish a committee for the purpose of reviewing the operation of the uniform law and preparing recommendations for any conference of revision, or, in the event of the convention not having come into force by 1 May 1968, of considering what further action should be taken to promote the unification of law on the international sale of goods.^{2/} Perhaps at that stage consideration could be given to harmonizing the 1964 Conventions with the 1955 Convention on the Law Applicable to International Sales of Corporeal Movables. Considerable progress could be made with regard to both 1964 Conventions if the proposed commission were to encourage wider participation in them. As Professor Tunc had said, those Conventions would render appreciable service in all parts of the world, and because the law governing internal sales was too deeply rooted in each nation's law of obligations for there to be any hope of unifying it in the foreseeable future except at a regional level, for the time being one must be content with the acceptance by different nations of a uniform law that would govern international transactions while their internal transactions continued to be governed by municipal law.

21. To sum up, his Government favoured the establishment of a United Nations commission on international trade law and would like that body to concentrate on achieving an appropriate degree of co-ordination and on devising promotional activities. With respect to the commission's performance of formulating function, however, a very cautious approach was advisable; for the moment, close communication with the existing formulating agencies seemed the wisest course.

22. Mr. ROSENNE (Israel) said that the item under discussion was an important one, and, he paid tribute

^{1/} See *Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 92, document A/6206, para. 8.*

^{2/} See *Yearbook, 1964 of the International Institute for the Unification of Private Law (Rome, 1965), p. 143.*

to all those responsible for the Secretary-General's report. His delegation considered that the United Nations should co-ordinate efforts to develop the law of international trade. It therefore approved in general the proposals for the establishment of a United Nations commission on international trade law put forward in paragraphs 225-234 of the report and welcomed the initiative taken by the sponsors of the draft resolution in document A/C.6/L.613 and Add.1 and 2. The new organ would in many respects be comparable to some of the functional commissions established by the Economic and Social Council. Unlike the International Law Commission, it would not be a body of independent experts but would consist of experts representing States. His delegation considered that the correct approach, although it hoped the new commission would be able to evolve a method of work comparable to that of the International Law Commission. It also agreed with paragraph 3 of the draft resolution.

23. As the International Law Commission itself had pointed out (see A/6396, para. 5), it would not be appropriate for it to become directly responsible for work in the field under discussion. That did not mean, however, that it could never deal with a branch of general international law having a direct bearing on the law of international trade if that branch came within the scope of a topic it was considering. For example, the topic of the most-favoured-nation clause, which it had been suggested the International Law Commission might take up, might be found to have a special connexion with international commercial arrangements, although as a general topic it was far wider in scope than international trade. The establishment of the new commission, therefore, should not mean that the International Law Commission was barred from dealing with the topic. However, the proposed method of work of the new commission and the fact that its main task would be co-ordination should provide a sufficient safeguard in such cases.

24. The establishment of a commission on international trade law would not mean any lessening of the competence of the intergovernmental organizations already operating in the field, particularly UNIDROIT and the Hague Conference on Private International Law. The proposed commission should work in close collaboration with such bodies, refraining from interference in their normal activities and procedures and making the fullest use of their experience and facilities, especially with regard to the task outlined in subparagraph 227 (c) of the report. That applied particularly to organizations with which the United Nations was already collaborating on topics other than the item under discussion. Such an approach might cut the cost of the new commission considerably and help to avoid duplication, waste and confusion. In stating those views, he had in mind the general principle that what was needed was not a new academic organ but a practical body created to meet an evident need. He would like to see those ideas reflected more clearly in subparagraph 8 (c) of the draft resolution, which was weakened by the words "where appropriate".

25. His delegation considered that it would be appropriate for the new commission to report to the General Assembly, either annually or as occasion

required, and for its reports to be allocated to the Sixth Committee for examination. It did not accept the view that the Committee was limited to questions of public international law, however defined. Incidentally, his delegation could not accept the definition of international law as law imposed by an international legislator in paragraph 24 of the Secretary-General's report. Nor did it accept the view that the non-legal aspects of international trade carried such weight that the reports of the proposed commission might be allocated to another Main Committee. In appropriate circumstances, of course, other Main Committees might be invited to consider aspects of a given question, either alone or in conjunction with the Sixth Committee. UNCTAD, too, might be concerned with various aspects of the law of international trade and should have an opportunity to express its views on the work being done, and even some power of initiative with regard to the work of the new commission. For example, there was no reason why UNCTAD should not continue its work on the most-favoured-nation clause or why the International Law Commission should not consider UNCTAD's work when it took up the topic. But, in general, his delegation supported the view contained in paragraph 228 of the Secretary-General's report.

26. His delegation hoped that a decision on the establishment of the commission and on its size could be taken at the current session. The election of its members should be deferred to the next session. In the meantime, the Secretary-General might be invited to consider whether there was any further preparatory work to be done and might submit a further report to the next session, when another debate might be held on the topic. The General Assembly should at least place the item on the provisional agenda of its next session. Before the new commission started work, there must be careful preparation, such as there had been in 1947 and 1948 for the International Law Commission. A provisional agenda and adequate documentation would have to be prepared well in advance of its first meeting. In that connexion he drew attention to paragraphs 203-207 of the Secretary-General's report and to General Assembly resolution 175 (II), of 21 November 1947, and suggested that corresponding provisions might be included in the draft resolution. On the membership of the new commission, his delegation had no strong views, although it considered the figure of thirty might make it rather unwieldy. It was doubtful about the procedure of biennial elections set forth in operative paragraph 2 of the draft resolution. It would prefer the commission to meet at United Nations Headquarters.

27. Mr. YANGO (Philippines) said that his delegation was much in favour of the progressive development of the law of international trade, which it regarded as complementary to the activities of the United Nations Development Decade and the work of UNCTAD. As the Secretary-General's report stated, the progressive unification and harmonization of the law of international trade would be advantageous on a world-wide basis, but particularly to developing countries. That view seemed to be shared by delegations from States with centrally planned economies and those from States with free enterprise economies alike.

28. The Philippines was interested in anything connected with economic development and the expansion of world trade. Although its economy was primarily agricultural, exports played an important part in its development. It was pursuing an industrialization programme in order to achieve a balanced economy and was therefore interested in expanding trade not only with its traditional partners but with other countries. It was developing commercial ties with its neighbours and had taken the initiative in forming regional associations for that purpose. It was also seeking export markets in Europe. In the past, it had encountered difficulties with such matters as export procedures, payments for its exports, customs procedures, foreign capital investment, joint ventures, and licensing of patents. Unification and harmonization of the law in such areas would therefore be of great interest to it.

29. Some progress in that direction already had been made by such bodies as UNIDROIT and the Hague Conference on Private International Law, and the Latin American countries had their own arrangements under the Treaties of Montevideo and the Bustamante Code. The regional economic commissions had also made a contribution. But the activities of the different bodies needed to be brought into harmony, a task that could best be performed by the United Nations. Countries would be more likely to accept the law of international trade and to ratify and accede to conventions on its various aspects if the United Nations played a role in its formulation. Even more important was the role the Organization could play in interpreting the law after it had been formulated, because unless there was an agreed interpretation the objective of a free flow of trade would not be achieved.

30. His delegation therefore supported the draft resolution before the Committee (A/C.6/L.613), noting that one of the functions of the proposed commission

would be to promote 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 as indicated in subparagraph 8 (d). With regard to the composition of the proposed commission, the Philippines favoured a smaller group of eighteen, as less likely to become unwieldy. The membership should properly be divided among the developing and developed countries and among the free enterprise countries and the countries with centrally planned economies; but because it was hoped that the developing countries would play a greater role in the future evolution of trade, they might be given proportionately greater representation.

31. In conclusion, he expressed his delegation's appreciation for the Secretary-General's report.

32. Mr. VAN HOOGSTRAATEN (Hague Conference on Private International Law) pointed out that paragraph 11 of the draft resolution (A/C.6/L.613) merely authorized the proposed commission to establish working relationships with organizations concerned with the harmonization and unification of international trade law. He suggested that the establishment of such relationships with UNIDROIT and with his organization should be obligatory.

33. Organizations that were regional, in the sense that they were composed of States of a certain region, did not necessarily approach their work in a regional spirit. That was certainly true of his organization, which took the view that a rule of international law must be acceptable to all the countries of the world. The composition of the proposed commission would undoubtedly encourage organizations to take the view of non-member States into account even more fully in the future.

The meeting rose at 6 p.m.