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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/Rev.1 and Add.1, A/C.6/L.615)

1. Mr. BLIX (Sweden) said that his Government had long participated in the efforts to unify and harmonize the legal rules and practices governing international trade and was prepared to give its support in the same spirit to the work of the United Nations commission on international trade law, the establishment of which was proposed in the draft resolution contained in document A/C.6/L.613/Rev.1.

2. The list of functions to be performed by the future commission had been borrowed almost word for word from the Secretary-General's report (A/6396 and Corr.1 and 2). Accordingly, those functions should be interpreted in the light of the considerations advanced in that report. Consequently, it should not be the new commission's function to duplicate or replace the specialized bodies already active in the field; its task would be to co-ordinate their activities and enhance their effectiveness.

3. It would be to the proposed commission's interest, therefore, to work closely with those bodies, in particular, with the Hague Conference on Private International Law and the International Institute for the Unification of Private Law (UNIDROIT), inviting their representatives, when appropriate, to take part in its discussions. Those two organizations had already done considerable work and would become increasingly important as new States participated in them. Moreover, the new commission should endeavour, under paragraph 11 of the draft resolution, to widen the scope of the arrangements for co-operation concluded between the United Nations and UNIDROIT in 1958 and between the United Nations and the Hague Conference in 1959.

4. The functional ties that the draft resolution proposed to establish between the new commission, on the one hand, and the General Assembly and the United Nations Conference on Trade and Development (UNCTAD), on the other, appeared to be soundly conceived. In keeping with its role, the Sixth Committee

would consider the reports of the proposed commission, just as it considered the reports of the International Law Commission, although UNCTAD would be given every opportunity to examine and comment on those reports.

5. As to the size of the new commission, a figure ranging between eighteen and twenty-four, as suggested in the Secretary-General's report (see A/6396, para. 229), would be less unwieldy; the problem of representation would probably be solved more easily if the current composition of the International Law Commission were copied, possibly with a few additions. It would be highly desirable if the size of the proposed commission could be fixed at the current session, and if delegations could reach a gentlemen's agreement on the distribution of seats among the various geographic groups. Such an agreement could be noted in the Sixth Committee's report, and it could then be left either to the President of the General Assembly to nominate the States that would make up the future commission, after consulting the groups concerned, or else to an election in the following year. In any case, it should be borne in mind that Member States would probably need time to decide, within their respective geographic groups, which of them should be represented in the new commission. His delegation hoped that the guiding consideration would be the ability of each State to appoint, in the words of paragraph 4 of the draft resolution, "persons of eminence in the field of the law of international trade".

6. Mr. MANNER (Finland) stressed the far-reaching importance of the decision that the General Assembly was called upon to take with respect to the development of the law of international trade. It was extremely important, for the developing countries in particular, that the basic legal concepts governing international trade should be clarified and harmonized. Countries with a long tradition in the application of private international law were now in a position to share their experience and knowledge of the subject for the benefit of all. His delegation praised the initiative taken by the Hungarian delegation, which had made it possible to study the item in question, and the excellence of the report that the Secretary-General had prepared with the assistance of experts. It endorsed the establishment of a United Nations commission on international trade law. Only experience would show to what extent the new commission would be able to promote the development and application of international trade law; but it was important to emphasize that its establishment should not be construed as an encroachment on the competence of the various organizations already working in the field.

7. In his delegation's opinion, there were certain matters that would have to remain outside the new commission's sphere of activity, in particular, those parts of private international law which were not covered by the definition given in paragraph 10 of the Secretary-General's report and those topics which concerned the development of public international law. Although it was conceivable that the International Law Commission itself might deal with private international law some day, there would, for quite some time, remain a kind of no-man's-land between the respective fields of work of the proposed commission and the International Law Commission. There was no organized or co-ordinated activity for codification of the subjects within that no-man's-land. In his opinion, it was with respect to those subjects that the next step in United Nations action to further the progressive development of international law would have to be taken. In that connexion it might be desirable to consider possible ways of facilitating and promoting the work of the International Law Commission, and it also would be necessary to find out how the work already carried out by various other international bodies with a view to the study and development of international law relating to the matters coming within that intermediate field could be used for the codification of those matters.

8. To illustrate his idea he cited the example, also mentioned in the Secretary-General's report, of the law of international rivers, in connexion with which the International Law Association had unanimously adopted the Helsinki Rules in August 1966. Although for a long time it had been theoretically possible to distinguish between the rules of international law based upon treaties and conventions and the principles of customary international law derived from rules, such as the Helsinki Rules, which were drawn up by a non-governmental body, the field of international law currently contained such a wealth of declarations, resolutions and other instruments that in view of their very different nature and impact one might have good reason to ask what significance should be given to rules and recommendations that had not been adopted by any official international body. That was a question which might concern the future work of the proposed commission and, in his delegation's view, due consideration should be given to it.

9. Mr. YANKOV (Bulgaria) said that his delegation was quite prepared to support the draft resolution in document A/C.6/L.613/Rev.1, inasmuch as it reflected the importance of the problem under consideration and the need for suitable action to promote the progressive development of international trade law. Because international trade, based on the equality and mutual benefit of the parties, was a prime factor in co-operation between States and offered the most constructive meeting-ground, free from tension and conflicts, every effort to promote it should be studied and encouraged. His delegation therefore praised the initiative taken by Hungary and that country's contribution to the study of the question of the harmonization and unification of international trade law, as well as the masterly report submitted by the Secretariat, which would be a historic United Nations contribution in a field of positive law in which clarification and co-ordination were necessary.

10. The preamble to the draft resolution appropriately indicated the importance of the question under consideration and the direction to be given to the new activity which it was proposed that the United Nations should undertake. In his opinion, a more explicit reference to the role of international trade in promoting co-operation and mutual understanding among States would be desirable. His delegation asked the sponsors of the draft whether they would agree to insert at the end of the penultimate preambular paragraph beginning with the word "Recalling" the following phrase: "and that international trade co-operation is an important factor for international stability and world peace".

11. Regarding the operative part, his delegation whole-heartedly supported the idea of establishing the proposed organ; it, too, thought that such an organ would fill a real need and would contribute greatly to the co-ordination of existing activities, in the interest of international trade. In particular, it approved without qualification the wording of operative paragraph 3, concerning the composition of the proposed United Nations commission on international trade law. Because of its functions and its objectives, that commission should not only represent States on the basis of equitable geographical distribution but should represent the principal social and economic systems. Unlike the International Law Commission, whose members were appointed in their personal capacity and whose function was to formulate recommendations concerning the progressive development and codification of international law, the new commission would have to perform co-ordination functions with respect to organizations in which States were represented. His delegation hoped that in determining the composition of the future commission the Sixth Committee and the General Assembly would give due consideration to its broader competence and to the principle of the equality of the partners in international trade, which should be reflected in equal representation.

12. Concerning the functions set out in operative paragraph 8 of the draft resolution, his delegation approved the proposed provisions in every respect; in its view, they constituted a desirable basis for the future commission's rules of procedure. The commission would not lack work, especially in view of the fact that international trade law enjoyed a certain autonomy in relation to the domestic law of the different countries; that must inevitably facilitate the proposed work of unification and harmonization. It would be necessary, however, to indicate the topics that would be suitable for that work. In his delegation's opinion, the indications in paragraphs 203-207 of the Secretary-General's report should not be considered exhaustive. The following additional topics might be considered: time limitations and prescription terms on claims relating to defects in the quality of goods delivered or faults in the conditions of delivery; topics relating to commercial arbitration, due consideration being given to the well-known fact that normal judicial procedure before the general judicial institutions took a long time and that the dynamic nature of international trade required more expeditious methods for solving claims by means of special judicial procedures; and topics relating to

techniques of contracting, requirements for the validity of trade contracts.

13. The establishment of the list of possible topics for research was thus an important task; his delegation wished to stress that the complexity of the problem called for reflection and that decisions that would have serious long-term effects should not be taken lightly. The future commission should be satisfied at first with a relatively unambitious programme and should view its functions realistically, so that it might achieve practical results that were in harmony with the practical nature of every-day international trade law problems.

14. Mrs. TSATSOS (Greece) was pleased that UNIDROIT and the Hague Conference on Private International Law had given General Assembly resolution 2102 (XX) their approval, without which the action envisaged in the draft resolution in document A/C.6/L.613/Rev.1 would be fruitless. The *raison d'être* of the new United Nations commission, the establishment of which was proposed in the draft, was its role of co-ordinating the work of the existing organizations. The future commission would no doubt be composed of a small number of States, but the scope of its activity would be world-wide, because of its connexion with the General Assembly. For that reason, her delegation thought that it would be advisable for the proposed commission to report directly to the General Assembly rather than through UNCTAD, so that its work could be examined without delay by the Sixth Committee and so that the developing countries could discuss all their problems.

15. Although it was true, as some had said, that international trade must be governed by one law, that was a goal which countries could not achieve without sacrificing to some extent their own legislation and their domestic interests. Her delegation, which was aware of, but undeterred by, that problem, had become a sponsor of the draft resolution in document A/C.6/L.613/Rev.1 and Add.1 and urged its unanimous adoption by the Committee.

16. Mr. MOTZFELDT (Norway) said that Norway, which because of the importance of its foreign trade and the activity of its merchant fleet stood particularly to gain by the development of international trade, took an active part in the work of the Hague Conference on Private International Law and UNIDROIT aimed at the harmonization and unification of national laws and the formulation of rules regulating the conflict of laws. His delegation, aware of the need for better co-ordination in that field, favoured the establishment of a United Nations commission on international trade law. The commission's role should be not to duplicate the work of such organizations as the Hague Conference and UNIDROIT but to co-ordinate and supervise their activities by maintaining close contact with them. A membership of twenty-four to twenty-seven would probably allow an equitable geographical distribution of seats in the proposed commission. As to the site, United Nations Headquarters, where its meetings could be held at less cost, seemed preferable.

17. Subject to those observations, Norway would support the draft resolution in document A/C.6/L.613/Rev.1.

18. Mr. HERRAN MEDINA (Colombia) formally introduced the revised version (A/C.6/L.613/Rev.1) of the draft resolution, which had been changed to take account of the suggestions made by various delegations.

19. Thus, in the third preambular paragraph, the word "divergencies" had been substituted for the expression "conflicts and divergencies" to avoid any confusion with the notion of rules regulating the conflict of laws. In operative paragraph 3, the words "in the commission as a whole" had been deleted and the expression "the principal economic and legal systems of the world" had been substituted for the words "countries of free enterprise and centrally planned economies".

20. Operative paragraph 8, subparagraphs (c) and (e), and operative paragraph 10 had also been reworded in order to include the requested clarifications.

21. He added that the sponsors of the draft resolution were prepared to consider any suggestions that might be made and, if necessary, to amend their text accordingly.

22. Mr. JACOVIDES (Cyprus) said that the draft resolution (A/C.6/L.613/Rev.1 and Add.1), of which his delegation was a sponsor, would be a positive contribution to furthering the aims the Committee had set itself in taking up the progressive harmonization and unification of international trade law, aims that were highly desirable in an increasingly interdependent world, in which the development of trade could not but help establish peaceful relations among States.

23. The establishment of a United Nations commission on international trade law would fill a twofold gap: first, in the activities of the United Nations, which had never dealt specifically with the matter, and second, in the activities of the organizations active in the field, whose work, however praiseworthy, lacked precisely that element of universality that a United Nations organ could give. The number of members suggested by the Secretariat seemed sensible, on condition, of course, that the principle of equitable geographical distribution was observed and that there was adequate representation of the world's principal economic and legal systems and of developed and developing countries.

24. Mr. WERSHOF (Canada) said that provided that the questions still unsettled were decided and that the changes in the text did not create any particular difficulties, his delegation was ready to support the draft resolution in document A/C.6/L.613/Rev.1, on the understanding that the proposed commission would deal with questions relating to international trade law as defined in paragraph 10 of the report of the Secretary-General. He was sure that in adopting the draft resolution neither the Sixth Committee nor the General Assembly intended to establish a commission to study international trade relations governed by public law or questions of trade policy already dealt with by other leading organizations. If the work of the commission was organized within the reasonable limits suggested by the Secretary-General in his report, it could render service to all countries. But he must insist that it would be unfortunate, and even

disastrous, if it left the field of international trade law and ventured into that of public international law.

25. In view of the nature of its work, the new commission should have a limited membership, not only for the sake of efficiency but to keep expenses to a minimum for Governments, which would have to bear the travel and subsistence costs of their representatives (A/C.6/L.615, para. 6). If the new commission had the same number of members as the International Law Commission, it would be possible for all legal systems to be represented and for equitable geographical distribution to be ensured.

26. Regarding the meeting place of the commission, a question left unsettled in operative paragraph 6 of the draft resolution, his delegation's preference was definitely for United Nations Headquarters in New York, for several reasons. First, it appeared from the statement of the financial implications set forth in document A/C.6/L.615 that expenses would be higher if the commission met in Geneva, and although the sum involved was not very large, the Committee should choose the most economical alternative, in accordance with the recommendation that the Organization's regular budget should be kept at its current level. In the second place, there was a move to establish a new section in the Office of Legal Affairs of the United Nations Secretariat to deal solely with questions of international trade law.

27. He saw no need to elect the members of the commission at the current session. Some representatives had already cited the precedent of the International Law Commission, established in November 1947 by General Assembly resolution 174 (II), in which the Assembly had approved its Statute but had decided to elect its members at the next session. A whole year had thus passed before the elections, which had enabled the Secretariat to obtain the services of qualified persons for the necessary preparatory work. There were many points of similarity in that respect with the current situation. In his opinion, there was no particular urgency about convening the new commission; but the number of members should be fixed at the current session, and it would be desirable for the distribution of the seats among the different groups to be known and recorded in the Sixth Committee's report. In the interval before the twenty-second session of the General Assembly the groups would have time to consult each other in preparation for the elections. The first meeting of the commission might then take place in an atmosphere more likely to produce definite results. If the sponsors of the draft resolution in document A/C.6/L.613/Rev.1 and Add.1 and the majority in the Sixth Committee agreed, operative paragraph 2 should state that the elections would be held at the twenty-second session.

28. Mr. USTOR (Hungary) said that he wished to refer to the arguments put forward by the representative of Canada and others, who wished to postpone the establishment of a commission on international trade law for a year. He did not deny the need to make preparations and to respect precedent, but he considered the current circumstances to be different from those that had prevailed when the International Law Commission had been established. The Secretary-

General's report provided a more than adequate basis for experts to get down to work promptly. His delegation therefore considered that the new commission should be established as soon as possible, particularly since there were certain practical questions requiring immediate action. Thus, an instrument as important as the Hague Convention relating to a Uniform Law on the International Sale of Goods (Corporeal Movables) had not yet come into force for lack of enough ratifications. The Diplomatic Conference on the Unification of Law Governing the International Sale of Goods held at The Hague in 1964 had recommended UNIDROIT to set up a committee composed of representatives of interested States to review the operation of the law and, if the Convention had not come into force by the scheduled date, to consider what changes should be made in it and transmit them to interested States that had not taken part in the work of the Diplomatic Conference. Thus, there were practical reasons for the prompt establishment of the new commission which could bring together specialists in the matter and tackle without delay such questions as the international sale of goods. It should not be forgotten that much remained to be done in that field. The new body might take the Secretary-General's report as its point of departure and decide its own programme of work and the order of priority of the questions to be studied.

29. Mr. KIBRET (Ethiopia) welcomed the fact that agreement had now been reached in the Committee on what international trade law was and on the need for the United Nations to play a more active role in its harmonization and unification. It was precisely to fill that need that the draft resolution in document A/C.6/L.613/Rev.1 proposed the establishment of a United Nations commission on international trade law.

30. It was obvious that the activities of the commission, the subjects to be studied and their order of priority should be determined essentially by the need to expand international trade. It would be pointless to draw up a convention and a uniform law if they did not appreciably benefit international trade. There was no doubt that the main unification effort should be directed towards the technical branches of trade law and that in that connexion the commission would gain by working in liaison with UNCTAD and requesting its comments and recommendations.

31. If, moreover, the commission was to do useful work, it was essential that it should not be confined to co-ordination but should be authorized to revise existing texts and draw up new ones. As a United Nations organ representing the international community it would be in the best position to carry out that task. In doing so, it would be no more likely to duplicate the activities of the existing bodies with which it would have to collaborate than the International Law Commission had been when it had drawn up its draft articles on the law of treaties on the basis of previous work. Like any work of harmonization and unification, the activities it was proposed to entrust to the new commission could not fail to produce new ideas, which, in their turn, would reveal the need to revise the texts drawn up by less representative bodies. Thus, for example, the General Conditions

for the Supply and Erection of Plant and Machinery for Export should make it an obligation for the exporter to guarantee a regular supply of spare parts, and no such obligation has been stated explicitly to date.

32. With those observations, his delegation would support the draft resolution contained in document A/C.6/L.613/Rev.1.

33. Mr. VAN LARE (Ghana) said that his country attached importance to the unification and harmonization of international trade law. Africa was seeking the widest possible markets for its goods, and the expansion of international trade was thus of the greatest interest to all African States. Ghana saw no reason, however, why the election of the members of the commission should not be postponed until 1967, inasmuch as that would allow time to find specialists

in international trade law. Due allowance must be made for the situation of the African countries, which suffered from a shortage of experts, and if only for that reason his delegation supported the Canadian representative's suggestion. Even if it was decided to hold the elections during the current session, a certain period should be allowed before the first meeting of the new commission so that the developing countries could make the necessary arrangements.

34. Mr. USTOR (Hungary) said that he had listened with great interest to the comments made during the debate and that the sponsors of the draft resolution would get together after the close of the meeting in order to consider the problems raised and try to solve them.

The meeting rose at 12.35 p.m.