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CONSIDERATION OF INCLUSION OF INTERNATIONAL
SHIPPING LEGISLATION AMONG THE PRIORITY TOPICS
IN THE WORK PROGRAMME

Note by the Secretary-General

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INTRODUCTION

1. Item 7 of the provisional agenda of the second session of the United Nations Commission on International Trade Law (A/CN.9/13) is entitled: "Consideration of inclusion of international shipping legislation among the priority topics in the work programme".
2. To assist the Commission in considering this item the present note, after referring to the action taken by the Commission at its first session in respect of international shipping legislation, describes briefly the developments on that subject within the United Nations system since the end of the first session of the Commission.

CONSIDERATION OF THE QUESTION OF INTERNATIONAL SHIPPING LEGISLATION AT THE FIRST SESSION OF UNCITRAL

3. The Commission, at its 20th, 23rd and 25th meetings, discussed the question, raised by the representative of Chile, whether international shipping legislation should be added to the priority topics agreed earlier during the first session.
4. At the end of the debate on this matter the Commission took note of a statement by the representative of the Secretary-General about the possibility that the Office of Legal Affairs might prepare a paper for subsequent consideration by the Commission.^{1/}

ACTION BY UNCTAD IN RESPECT OF INTERNATIONAL SHIPPING LEGISLATION

5. On 25 March 1968, shortly after the end of the first session of UNCITRAL (which lasted from 29 January to 26 February 1968) the second UNCTAD Conference in New Delhi, by a roll-call vote of 73 in favour, 19 against and 5 abstentions, adopted resolution 14 (II) entitled "International shipping legislation".^{2/}
In the preamble the Conference noted, inter alia, that UNCITRAL had not

^{1/} See report of the United Nations Commission on International Trade Law on the work of its first session, Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), para. 69; see also the statement of the representative of the Secretary-General (A/CN.9/SR.25).

^{2/} The Conference had before it, inter alia, a study by Dr. T.K. Thommen entitled "International legislation on shipping" (TD/32 and Corr.1).

included shipping legislation in its present work programme. The operative part of the resolution reads as follows:

"The United Nations Conference on Trade and Development,

.....

"1. Recommends:

"(a) That the Trade and Development Board instruct the Committee on Shipping of UNCTAD to create a Working Group on International Shipping Legislation, from among the member States, to operate along the following lines:

"(i) The Working Group should review commercial and economic aspects of international legislation on shipping in order to identify areas where modifications are needed and to give recommendations concerning new legislation which has to be drafted;

"(ii) The Committee on Shipping, upon recommendation of the Working Group, may ask UNCITRAL to take up the work of drafting new conventions on the subjects identified by the Working Group and also to set up a special subsidiary body for the purpose of such drafting, and

"(iii) If it should appear that UNCITRAL is not able to draft the required legislation according to the time schedule requested by the Committee on Shipping, that Committee should consider other steps to finalize the drafting;

"(b) That the following subjects, among others, should be taken up for drafting appropriate conventions or for revising existing legislation:

"(i) Charter parties;

"(ii) Marine insurance, and

"(iii) Amendments to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924;

"(c) That the Working Group should examine the feasibility of drafting a general instrument (convention or agreement) on maritime transportation and development, dealing with international relations in shipping, for the consideration by an international conference to be convened under the auspices of the United Nations;

"2. Requests:

"(a) The UNCTAD secretariat, in co-operation with other international bodies wherever feasible, to undertake immediate and intensive studies on the subjects mentioned in paragraphs 1 (b) and 1 (c) above as background material for the Working Group;

/...

"(b) The UNCTAD secretariat and other inter-governmental bodies responsible for international legislation to arrange for a review of progress made by member States in the implementation of such international legislation as may result from the work of the Commission on Shipping in this field."

6. Pursuant to the recommendation of the Conference, the Trade and Development Board discussed the question of international shipping legislation at its seventh session.

7. In addition to Conference resolution 14 (II) the Board had before it a note entitled "The role of UNCITRAL in international shipping legislation", submitted jointly by the UNCTAD secretariat and the United Nations Office of Legal Affairs. The text of the note, which was issued as document TD/B/SC.8/1, is reproduced in annex I hereto. In paragraph 8 of that note it was stated:

"The Secretary-General of UNCTAD and the Legal Counsel of the United Nations consider that the inclusion of international shipping legislation among the priority topics in UNCITRAL's programme would facilitate the implementation of UNCTAD resolution 14 (II) and avoid duplication of work between the two United Nations organs."

8. On 21 September 1968 the Board, by unanimous vote, adopted resolution 46 (VII), which reads:

"The Trade and Development Board,

"Recalling resolution 14 (II) of the second session of the United Nations Conference on Trade and Development concerning international legislation on shipping,

"Taking note of the views expressed on the subject during the Conference,

"Taking note also of the note by the United Nations Secretariat entitled 'The role of the United Nations Commission on International Trade Law in international shipping legislation',

"Bearing in mind paragraph 7 of resolution 11 (II), adopted unaniously at the second session of the Conference, on the particular needs of land-locked developing countries,

"Instructs the Committee on Shipping of UNCTAD to create a Working Group on International Shipping Legislation, from among the member States, and to determine its terms of reference in the light of the provisions of Conference resolution 14 (II) and bearing in mind the views expressed on the subject at the second session of the Conference, and also to prepare its programme of work."

9. Immediately before putting the above resolution to a vote the President of the Trade and Development Board made a statement which is recorded as follows, in paragraph 74 of the Board's report:^{3/}

"... The President ... said that many representatives, in view of the importance of co-operation between UNCTAD and UNCITRAL at the intergovernmental and secretariat levels, recommended that UNCITRAL should take the necessary measures to deal as a priority topic with international shipping legislation in respect of subjects referred to UNCITRAL by the Committee on Shipping on the recommendation of the Working Group."

10. In accordance with the request of the Trade and Development Board the creation of a working group on international shipping legislation will be considered by the UNCTAD Committee on Shipping at its third session which is scheduled to meet from 9 to 25 April 1969 in Geneva.

ACTION BY THE GENERAL ASSEMBLY AT ITS TWENTY-THIRD SESSION

11. The General Assembly, in paragraph 6 (b) of resolution 2421 (XXIII) of 18 December 1968, recommended that the United Nations Commission on International Trade Law should "consider the inclusion of international shipping legislation among the priority topics in its work programme". Resolution 2421 (XXIII) was adopted by the General Assembly on the recommendation of the Sixth Committee. The text of the Sixth Committee's report relating to this subject (A/7408, para. 17) is as follows:

"With regard to international shipping legislation, reference was made to the recommendation made by many members of the Trade and Development Board at its seventh session to the effect that UNCITRAL should take the necessary measures to deal, as a matter of priority, with international shipping legislation. Most of the representatives who spoke on this subject favoured an active involvement on the part of UNCITRAL and said that they would welcome the inclusion of shipping legislation among the priority items. Some representatives, while agreeing that UNCITRAL should consider the law of shipping, deemed it nevertheless advisable for UNCITRAL to defer its work on that subject

^{3/} Report of the Trade and Development Board, 10 September 1967-23 September 1968, Official Records of the General Assembly, Twenty-third Session, Supplement No. 14 (A/7214).

until the Committee on Shipping of the Trade and Development Board had considered the scope of international shipping legislation and made its recommendations to UNCITRAL. Other representatives drew attention to the activities of the United Nations Conference on Trade and Development (UNCTAD) and the Intergovernmental Maritime Consultative Committee (IMCO) ^{4/} in the matter of international shipping legislation and emphasized, in this connexion, that it was of increasing importance that UNCITRAL should co-ordinate the various efforts made in this field so as to avoid, as far as possible, duplication of work."

JOINT SHIPPING LEGISLATION UNIT
(UNCTAD SECRETARIAT/OFFICE OF LEGAL AFFAIRS)

12. The Secretary-General of UNCTAD and the Legal Counsel of the United Nations have agreed to establish a shipping legislation unit under the joint authority of the UNCTAD secretariat and the Office of Legal Affairs.

13. Should UNCITRAL decide to include international shipping legislation among the priority topics in its work programme, the joint shipping legislation unit would service the activities of UNCITRAL pertaining to international shipping legislation, as well as the UNCTAD Working Group on International Shipping Legislation. The establishment of a joint unit would avoid duplication within the United Nations Secretariat and reduce the total staff requirements in this field.

^{4/} On 29 November 1968 the Council of IMCO adopted resolution C.44 (XXI) entitled "Activities in the field of maritime law". The text of the resolution is reproduced in annex II hereto.

ANNEX I

The role of UNCITRAL in international shipping legislation

Note by the United Nations Secretariat^{1/}

1. The purpose of this note, which was prepared jointly by the UNCTAD secretariat and the United Nations Office of Legal Affairs, is to set out some considerations which might be helpful in connexion with the implementation of resolution 14 (II) adopted by the second UNCTAD Conference in New Delhi on 25 March 1968.
2. The New Delhi resolution recommended that the Board instruct the Committee on Shipping to create a working group on international shipping legislation which should review commercial and economic aspects of international legislation on shipping in order to identify areas where modifications are needed and give recommendations concerning new legislation to be drafted. It was also provided that the Committee on Shipping "may ask UNCITRAL to take up the work of drafting new conventions on the subjects identified by the Working Group and also to set up a special subsidiary body for the purpose of such drafting", and that "if it should appear that UNCITRAL is not able to draft the required legislation according to the time schedule requested by the Committee on Shipping, that Committee should consider other steps to finalize the drafting".
3. The wording of the resolution reflects the awareness of the Conference that UNCITRAL, at its first session, had not placed shipping legislation among its priority topics. The Conference, being "convinced of the need for an early review of some areas of the existing international legislation concerned with the commercial and economic aspects of shipping" sought to establish an institutional machinery intended to bring about such a review regardless of whether or not UNCITRAL would be prepared to undertake the drafting work on this topic.
4. At the first session of UNCITRAL, held in New York from 29 January to 26 February 1968, transportation was listed, without objection, among the topics which should form its future work programme. That topic, however, was not included among the priority items selected by UNCITRAL (i.e., the international sale of goods, international payments and international commercial arbitration).

^{1/} This note was issued as document TD/B/SC.8/1 under items 5 (b) and 9 of the agenda for the seventh session of the Trade and Development Board.

5. It should be noted that when UNCITRAL decided on the priority items it had not received any indication of a desire by UNCTAD that UNCITRAL should deal with international shipping legislation. This subject was brought up by a member of UNCITRAL during the last few days of its first session after the priority items had been agreed following a lengthy debate. In view of the reluctance of some delegations to reopen the matter of priority at that stage, UNCITRAL confined itself to taking note of a statement by the representative of the Secretary-General about the possibility that the Office of Legal Affairs would prepare a paper on the subject for subsequent consideration.

6. UNCITRAL was established by General Assembly resolution 2205 (XXI) as the United Nations organ entrusted with the task of promoting the progressive harmonization and unification of the law of international trade, including the field of transportation. Considering the interest of UNCTAD in an early review of international shipping legislation and the importance of avoiding duplication of work within the United Nations, it would seem appropriate at this stage for the Board to recommend that UNCITRAL should add that subject to its priority items. Such recommendations would be transmitted to the twenty-third session of the General Assembly^{1/} and would be considered by UNCITRAL at its second session in March 1969.

7. It may be reasonably expected that a recommendation to this effect by the Board would be favourably considered by UNCITRAL. In this connexion it should be noted that twenty-two of the twenty-nine members of UNCITRAL are members of the present Board.

8. The Secretary-General of UNCTAD and the Legal Counsel of the United Nations consider that the inclusion of international shipping legislation among the priority topics in UNCITRAL's programme would facilitate the implementation of UNCTAD resolution 14 (II) and avoid duplication of work between the two United Nations organs. The proposed working group on international shipping legislation

^{1/} Paragraph 10 of General Assembly resolution 2205 (XXI) provides that any "comments or recommendations which the Conference or the Trade and Development Board may wish to make, including suggestions on topics for inclusion in the work of the Commission, shall be transmitted to the General Assembly in accordance with the relevant provisions of Assembly resolution 1995 (XIX) of 30 December 1964".

would, as provided in the resolution, review the commercial and economic aspects of international legislation on shipping and, having identified areas where modifications are needed, would submit its recommendations to UNCITRAL. UNCITRAL would then undertake the necessary drafting work as a matter of priority.

ANNEX II

ACTIVITIES IN THE FIELD OF MARITIME LAW

RESOLUTION C.44 (XXI)

adopted on 29 November 1968 by the IMCO Council

"THE COUNCIL,

RECALLING the provisions of Articles 1 and 3 of the IMCO Convention as well as Resolution 46 (VII) of the seventh session of the Trade and Development Board and the terms of reference of UNCITRAL, as set out in Resolution 2205 (XXI) of the twenty-first session of the General Assembly,

COGNIZANT of the complexities in the field of maritime law and of its many facets,

RECOGNIZING the need for progressive harmonization and unification of all aspects of international law in the maritime field and the fact that co-ordination of efforts between the Organizations of the United Nations family appears indispensable in order to elucidate the fields in which international law must be prepared,

NOTING WITH APPRECIATION the work undertaken by the Legal Committee of the Organization,

COGNIZANT of the valuable part which IMCO has already played and will continue to play in the preparation of conventions relating to maritime law and the need to avoid duplication of effort in this field,

1. INDICATES its desire that IMCO exercise its full competence by taking part as appropriate in the legal work in the maritime field being undertaken under the United Nations system;

2. ENDORSES the view expressed by the Legal Committee that it can play an effective part in promoting the establishment of law in the maritime field whether such be initiated from within the Organization or referred to it by other bodies competent in associated fields, as appropriate;

3. REQUESTS the Secretary-General to draw the attention of the Secretariat of the United Nations Commission on International Trade Law, the United Nations Office of Legal Affairs, the Secretary-General of UNCTAD and other relevant United Nations bodies to the activities already undertaken by IMCO in the field of maritime law;

/...

4. FURTHER REQUESTS the Secretary-General to report to the Council at its twenty-second session on the outcome of his discussions with other members of the United Nations family, with particular emphasis on the degree of agreement achieved in delineating IMCO's role in this field, including steps necessary to avoid areas of possible duplication as well as an estimation of the degree of reinforcement of the Secretariat required during the next biennium to ensure that the Organization is equipped to play its part fully in this field."
