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REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL
TRADE LAW ON THE WORK OF ITS THIRD SESSION

Report of the Sixth Committee

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CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
I. INTRODUCTION	1 - 4	2
II. PROPOSALS	5	2
III. DEBATE	6 - 36	3
A. The role and function of UNCITRAL	7 - 9	3
B. The working methods of UNCITRAL	10 - 13	4
C. International sale of goods	14 - 17	5
D. International payments	18 - 20	6
E. International commercial arbitration	21 - 24	7
F. International legislation on shipping	25 - 27	8
G. Publications of UNCITRAL	28 - 29	9
H. Training and assistance in the field of international trade law	30 - 32	9
I. Questions relating to future work	33 - 36	10
IV. VOTING	37 - 38	11
V. RECOMMENDATION OF THE SIXTH COMMITTEE	39	11

I. INTRODUCTION

1. At its 1843rd plenary meeting, on 18 September 1970, the General Assembly included the item entitled "Report of the United Nations Commission on International Trade Law on the work of its third session"^{1/} as item 86 on the agenda of its twenty-fifth session, and allocated it to the Sixth Committee for consideration and report.
2. The Sixth Committee considered this item at its 1194th to 1199th meetings held from 8 to 14 October 1970 and at its 1201st and 1205th meetings, held on 15 and 22 October 1970.
3. At its 1194th meeting, on 8 October 1970, Mr. Albert Lilar (Belgium), Chairman of the third session of the United Nations Commission on International Trade Law (UNCITRAL), introduced the Commission's report on the work of that session.^{2/} The Sixth Committee also had before it a note by the Secretary-General setting forth the comments on UNCITRAL's report by the Trade and Development Board of the United Nations Conference on Trade and Development (A/C.6/L.794).
4. At the 1201st meeting, on 15 October 1970, the Rapporteur of the Sixth Committee raised the question whether the Sixth Committee wished to include in its report to the General Assembly a summary of the views expressed during the debate on agenda item 86. After referring to paragraph (f) of the annex to General Assembly resolution 2292 (XXII), of 8 December 1967, the Rapporteur informed the Committee of the financial implications of the question. At the same meeting, the Committee decided that, in view of the nature of the subject-matter, the report on agenda item 86 should include a summary of the representative trends of opinion.

II. PROPOSALS

5. At the 1205th meeting, on 22 October 1970, the representative of Belgium introduced a draft resolution sponsored by Australia, Belgium, Brazil, Greece,

^{1/} Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/8017).

^{2/} This presentation was pursuant to a decision taken by the Sixth Committee at its 1096th meeting, on 13 December 1968 (see Official Records of the General Assembly, Twenty-third Session, Annexes, agenda item 88, document A/7408, para. 3).

Haiti, Hungary, India, Indonesia, Iran, Japan, Morocco, Nigeria, Norway, Pakistan, the Philippines, Romania, Rwanda, Singapore and Zambia (A/C.6/L.798). The draft resolution was adopted by the Sixth Committee without amendment (see paragraph 39 below).

III. DEBATE

6. The main trends of the opinions expressed in the Sixth Committee are summarized in sections A to I below. Sections A and B concern the observations on the role and functions of UNCITRAL and its working methods. The succeeding sections, relating to more specific topics, are set out under the following headings: international sale of goods, international payments, international commercial arbitration, international legislation on shipping, publications of UNCITRAL, training and assistance in the field of international trade law and questions relating to future work.

A. The role and functions of UNCITRAL

7. Many representatives expressed satisfaction at the progress that UNCITRAL had already made towards the progressive unification and harmonization of international trade law. The view was expressed that the Commission had a significant role to play in the elimination of obstacles which hinder the flow of international trade and consequently in the maintenance of peace and the furtherance of the economic well-being of all peoples. Special reference was made to the needs of developing and land-locked countries.

8. The view was expressed that the primary function of the Commission was to co-ordinate the activities of existing international organizations active in the field of unification and harmonization of international trade law. Several representatives stated that this approach would unduly restrict UNCITRAL's terms of reference embodied in General Assembly resolution 2205 (XXI) of 17 December 1966. In the opinion of these representatives, such a restrictive view of the Commission's function was undesirable in view of the representation in UNCITRAL of the regions and the economic and legal systems of the world. While emphasizing the necessity of

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co-ordinating the work of, and co-operation with, those organizations, these representatives agreed that, in the proper performance of its duties, UNCITRAL should undertake, whenever necessary, the task of formulating new uniform rules and conventions. Some representatives observed that, without such a creative function, the Commission would serve only as an instrument for maintaining existing legal rules to the detriment of developing nations.

9. Some representatives expressed the opinion that UNCITRAL should also direct its efforts towards the elimination of all forms of discriminatory norms and practices presently encountered in the field of international trade. Other representatives were of the opinion that the success so far achieved by UNCITRAL was due in large measure to its avoidance of political controversies, and that this approach was consistent with the understanding at the time of the establishment of UNCITRAL that its work would be directed to the body of rules governing international commercial relationships of a private law nature.

B. The working methods of UNCITRAL

10. Most representatives who took the floor commended the working methods adopted by UNCITRAL. These working methods were characterized as efficient, constructive and pragmatic. Many representatives expressed appreciation of the extensive analytical preparatory work undertaken by the Commission with a view to assessing commercial norms and practices existing in different parts of the world as well as identifying the problems encountered in various fields of international trade law. In the opinion of many representatives, this approach would ensure that UNCITRAL's solutions were based on solid foundations and developed with due care. One representative, however, cautioned against excessive preparatory work which might interfere with prompt and dynamic action.

11. Many representatives welcomed the manner in which the Commission utilized the expertise of its members in the preparation of technical specialized studies and the drawing up of parallel draft articles and conventions. In this respect, special tribute was paid to the Working Group on Time-limits and Limitations in the field of international sale of goods for the expeditious way in which it performed its task. Many representatives also commended UNCITRAL for the effective manner in which it had delegated authority to the Working Group

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on the International Sale of Goods ("Working Group on Sales") and for the various measures adopted in order to systematize and streamline its work in this field.

12. Most representatives expressed satisfaction with the level of co-operation that UNCITRAL had established with international organizations at work in the field of international trade law. Special reference was made to the co-operation received in developing and analysing commercial practices with respect to negotiable instruments. Some representatives expressed the hope that UNCITRAL would broaden the scope of its co-operation and make even more use of the expertise available in international organizations.

13. Many representatives also expressed their appreciation of the fact that UNCITRAL continued to reach its decisions by consensus without voting. In the opinion of these representatives, the consensus method was conducive to achieving a large measure of co-operation among countries having different legal, economic and social systems. It was noted that differing views with respect to the approach to specific problems were inevitable and the hope was expressed that the consensus method would not be allowed to block the solutions to these problems.

C. International sale of goods

14. All representatives who spoke on the issue stressed the importance and significance of the unification and harmonization of the substantive rules governing the international sale of goods. Most representatives welcomed UNCITRAL's mandate to the Working Group on Sales to continue the systematic examination of the Hague Conventions of 1964 relating to a Uniform Law on the International Sale of Goods and to a Uniform Law on the Formation of Contracts for the International Sale of Goods. In the view of several representatives, the Hague Diplomatic Conference on the Unification of Law governing the International Sale of Goods, at which these conventions were drawn up, was not fully representative of the membership of the United Nations; specific reference was made to the lack of adequate representation of the developing nations.

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15. Some representatives, while welcoming the revision of these conventions, were of the opinion that UNCITRAL's work should not discourage their acceptance pending later revision. In this respect, it was pointed out that under the terms of recommendation II, annexed to the Final Act of the Diplomatic Conference, acceptance or ratification of these conventions did not preclude the possibility of their future revision.

16. All representatives who spoke on the question noted with appreciation that a preliminary draft of a uniform law on time-limits and limitations had been prepared by a Working Group. While some representatives expressed the opinion that these uniform rules should form an integral part of the convention on uniform rules governing the international sale of goods, others preferred a separate convention on time-limits and limitations.

17. Several representatives from developing countries stressed the need for general conditions of sale and standard contracts in order to enable their countries to negotiate international sales transactions on a footing of parity with developed nations. Importance was therefore attached to the study the Secretary-General was requested to undertake on the feasibility of developing general conditions of sale embracing a wider scope of commodities than those covered by the formulations of the Economic Commission for Europe.

D. International payments

18. Many representatives commended UNCITRAL's approach to the unification and harmonization of the law relating to negotiable instruments. In their opinion, the Commission's decision to continue to investigate the feasibility of drawing up a convention setting forth uniform rules governing a special negotiable instrument for optional use in international transactions was well calculated to circumvent the difficulties arising from the divergencies between the common law and the civil law rules governing negotiable instruments. Some representatives pointed out that recent developments militated in favour of standardization and greater rationalization of practices, and that such matters as the form of an instrument became increasingly important in the context of automated processing.

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19. Many representatives noted with appreciation that UNCITRAL had gathered and skilfully analysed an impressive volume of data on the practices of banking and trade institutions in all parts of the world, and had also obtained the views and suggestions of Governments and banking institutions on the possible content of the uniform rules governing the proposed negotiable instrument. There was general agreement that such an analytical inquiry was an important step in ensuring that the proposed uniform rules would meet the practical needs of international commerce.

20. Several representatives expressed satisfaction with the decisions taken by UNCITRAL in respect of bankers' commercial credits and guarantees and securities. In particular, these representatives welcomed the opportunity given to Governments and to banking and trade institutions not represented in the International Chamber of Commerce (ICC) to state their views in respect of the forthcoming revision of the "Uniform Customs and Practices for Documentary Credits", drawn up by ICC.

E. International commercial arbitration

21. Many representatives expressed agreement with the conclusion reached by UNCITRAL that, with regard to international commercial arbitration, the best course, for the time being, was for the Commission to concern itself with the problems of interpretation and application of the existing conventions. In this connexion, the representatives who spoke on the subject paid tribute to the work of the Special Rapporteur, Mr. Ion Nestor (Romania), and welcomed the extension of his mandate to the fifth session of the Commission.

22. Several representatives also approved UNCITRAL's decision to promote the acceptance of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958^{3/} by the largest possible number of States. Some representatives stated that, in response to UNCITRAL's recommendation, their Governments had recently taken or were contemplating taking affirmative action towards ratification of this Convention.

^{3/} United Nations, Treaty Series, vol. 330 (1959), No. 4739.

23. The suggestion was made that the Commission might consider the compilation and dissemination of texts of arbitral awards or judicial decisions in the field of international trade law. Another representative suggested that the Commission might find it useful to collect and publish in a future volume of the Register of Texts the main multilateral agreements relating to international commercial arbitration and to list the current signatories of these conventions.

24. With reference to the rising cost of arbitration, it was suggested that the setting up of regional arbitration tribunals by the regional economic commissions might help reduce these costs and encourage wider use of the arbitration procedure for the settlement of commercial disputes.

F. International legislation on shipping

25. Several representatives stressed the importance of fair and equitable international shipping legislation to the economic development of their countries. Representatives of the developing countries pointed out that the existing international legislation on shipping continued to reflect the interests of ship-owners at the expense of shippers in general. They were therefore gratified that UNCITRAL, at its second session, had added international shipping legislation to the priority topics included in its programme of work and expressed the hope that the Commission would promptly undertake critical examination of existing international legislation.

26. Most representatives emphasized the importance of co-ordinating UNCITRAL's efforts with those of other international organizations with special competence in this field; in this regard, reference was made to UNCTAD, the Inter-Governmental Maritime Consultative Organization (IMCO) and the International Maritime Committee. These representatives took note, with appreciation, of the organizational measures taken at the third session to co-ordinate the work in this area with UNCTAD's Working Group on Shipping. However, several representatives regretted that the Commission had not yet carried out substantive work on this important subject and expressed the hope that, at its fourth session the Commission would consider the matter in depth. Some representatives, while accepting the view that co-ordination with UNCTAD and other bodies concerned

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was essential, were of the opinion that the critical reappraisal and improvement of the existing international legislation on shipping by UNCITRAL should not be delayed by problems relating to the allocation of functions between the Commission and UNCTAD.

27. Some representatives recommended that UNCITRAL should, for the time being, concentrate its efforts in specific areas, such as the law relating to carriers' liabilities to shippers with special reference to standard clauses in bills of lading and charter parties.

G. Publications of UNCITRAL

28. Many representatives noted with appreciation that a volume of the Register of Texts and the first volume of the Yearbook of the United Nations Commission on International Trade Law would soon be published in all working languages of the General Assembly. Several representatives stressed the importance of the continued publication of both the Register of Texts and the Yearbook in order to provide Governments, universities and practitioners with basic source material on international trade law, and to make the work of the Commission more widely known beyond the forum of the United Nations.

29. Some representatives expressed the view that these publications occupied the time of UNCITRAL's secretariat with editorial work and burdened the budget of the United Nations. These representatives expressed the hope that the cost of future publications would be substantially reduced.

H. Training and assistance in the field of international trade law

30. Many representatives stressed the importance for UNCITRAL to develop local expertise in the field of international trade law, particularly in the developing countries, and welcomed the Commission's decision to continue and intensify the existing programme of training and assistance.

31. Some representatives suggested that a new programme of training and assistance, with emphasis on substantial periods of practical training, including apprenticeship with organizations or institutions actively engaged in work in the area, should be developed by UNCITRAL. It was noted that such a programme should not involve additional cost to the United Nations.

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32. Other representatives stressed the importance of establishing chairs or regional institutes on international trade law within a university or academic institution in developing countries, and expressed the hope that ways to implement this programme could be found.

I. Questions relating to future work

33. Some representatives expressed appreciation of the proposal, submitted by the delegation of France at the third session of UNCITRAL, calling for the conclusion of a basic convention to establish a common body of international trade law. Under this proposal, new uniform rules approved by UNCITRAL would come into effect in a State that adopted the basic convention unless that State expressly rejected all or part of the uniform rules within a specified period. It was suggested that, by this approach, unified rules for international trade would more rapidly come into force than by the traditional system of ratification of separate conventions.

34. Many representatives, however, expressed doubt as to the feasibility of the proposal because of its inconsistency with the constitutional practice of many States. Some representatives also mentioned that the proposal might encroach upon sovereignty of States.

35. The view was expressed that the constitutional difficulties which might arise from acceptance of the proposal were perhaps not insurmountable; similar procedures had been adopted to implement the regulations of other international organizations. It was also stated that the proposal involved no infringement on national sovereignty of States because States were free to decide whether to adhere to the initial basic convention. Furthermore, a State which had adhered to the basic convention was at liberty to reject any of the uniform rules developed subsequent to the basic convention.

36. Several representatives endorsed UNCITRAL's recommendations relating to the desirability of making provision for it to obtain, where necessary, the services of consultants with special expertise in specific matters, and to staff adequately the Commission's secretariat. On the other hand, some representatives stressed that full implementation of these recommendations would be inappropriate because of financial considerations and that the work of UNCITRAL should be done without any supplementary expenses. /...

IV. VOTING

37. At the 1205th meeting, on 22 October 1970, the Sixth Committee unanimously adopted the draft resolution submitted by Australia, Belgium, Brazil, Greece, Haiti, Hungary, India, Indonesia, Iran, Japan, Morocco, Nigeria, Norway, Pakistan, the Philippines, Romania, Rwanda, Singapore and Zambia (A/C.6/L.798) (see paragraph 39 below).

38. Explanations of vote were given before the voting by Sierra Leone, the United States of America, the Union of Soviet Socialist Republics and Zambia.

V. RECOMMENDATION OF THE SIXTH COMMITTEE

39. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Report of the United Nations Commission on International Trade Law
The General Assembly,

Having considered the report of the United Nations Commission on International Trade Law on the work of its third session,^{4/}

Recalling its resolution 2205 (XXI) of 17 December 1966 establishing the United Nations Commission on International Trade Law and defining the object and terms of reference of the Commission,

Recalling its resolution 2502 (XXIV) of 12 November 1969 with respect to the report of the United Nations Commission on International Trade Law on the work of its second session, in which the Assembly recommended that the Commission should keep its programme of work under constant review, bearing in mind the important contribution which the progressive harmonization and unification of international trade law can make to economic co-operation among all peoples and thereby to their well-being,

Noting the forthcoming publication of the Register of Texts and of the first volume of the Yearbook of the United Nations Commission on International Trade Law,^{5/}

^{4/} Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 17 (A/3017).

^{5/} United Nations publication, Sales No.: E.71.V.1, vol. 1.

Noting that the Trade and Development Board, at its tenth session, expressed its appreciation of the report of the United Nations Commission on International Trade Law,^{6/}

1. Takes note with appreciation of the report of the United Nations Commission on International Trade Law on the work of its third session and of the progress made in its work;

2. Notes with appreciation that the desire, expressed in its resolution 2502 (XXIV), that there be the widest possible participation by the members of the United Nations Commission on International Trade Law in the preparatory work to be done by working groups has been fulfilled, and that this participation has substantially advanced the work of the Commission;

3. Endorses the desire expressed by the United Nations Commission on International Trade Law to obtain, where necessary, the services of consultants or organizations with special expertise in technical matters dealt with by the Commission, it being understood that recourse to such services is made only in special circumstances;

4. Expresses the hope that, in accordance with the desire expressed in the report of the United Nations Commission on International Trade Law, it will prove possible to staff the Commission's secretariat appropriately so as to cope with any increases in the work-load involved in servicing the Commission, provided that this does not entail supplemental appropriation;

5. Recommends that the United Nations Commission on International Trade Law should:

(a) Continue its work on the topics to which it has decided to give priority, that is, the international sale of goods, international payments, international commercial arbitration and international legislation on shipping;

(b) Continue to give attention to ways and means of promoting training and assistance in the field of international trade law;

(c) Continue to collaborate fully with international organizations active in the field of international trade law;

^{6/} Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 15 (A/8015, part II), para. 232.

(d) Continue to develop working methods which will enhance the efficiency of working groups and which will ensure full consideration of the commercial practices and needs of all regions;

(e) Continue to give special consideration, in promoting the harmonization and unification of international trade law, to the interests of developing and land-locked countries;

6. Requests the Secretary-General to forward to the United Nations Commission on International Trade Law the records of the discussions on the Commission's third report at the twenty-fifth session of the General Assembly.
