

# United Nations GENERAL ASSEMBLY

TWENTY-FIRST SESSION

Official Records



**SIXTH COMMITTEE, 955th  
MEETING**  
(Closing meeting)

Wednesday, 14 December 1966,  
at 3.25 p.m.

**NEW YORK**

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**Chairman:** Mr. Vratislav PĚCHOTA  
(Czechoslovakia).

## AGENDA ITEM 88

Progressive development of the law of international trade (*concluded*)\* (A/6396 and Corr.1 and 2 and Add.1 and 2, A/C.6/L.613/Rev.3, A/C.6/L.615/Rev.1)

1. Mr. HERRAN MEDINA (Colombia), on behalf of the sponsors of the draft resolution in document A/C.6/L.613/Rev.2, introduced a new revised version of the draft (A/C.6/L.613/Rev.3), the result of lengthy and delicate negotiations in which not only the sponsors, who met as an informal working group, but other delegations, including those of the USSR, the United Kingdom and France, had taken part.

2. The most difficult problems had been those of the size of the future commission, the geographical distribution of seats and the term of office of the members. Agreement had finally been reached on a membership of twenty-nine, with the seats distributed as indicated in operative paragraph 2. Paragraph 3 provided that the term of fourteen of the members elected at the first election would expire at the end of three years and that the President of the General Assembly would select those members within each of the five groups of States referred to in paragraph 2 by drawing lots. It had been agreed during the discussions that the purpose of the drawing would be to select the holders of four of the seats of the group of African States, two of those of the Asian group, two of those of the eastern European group, two of those of the Latin American group and four of those of the group of western European and other States. It had also been understood that that agreement would be mentioned in the Sixth Committee's report.

3. He further drew the Committee's attention to the rewording of operative paragraph 8 (former paragraph 6 of the initial draft) dealing with the new commission's place of meeting, to the insertion of a new paragraph 4 concerning the date on which the members of the commission would take office, and to the addition of two new paragraphs, numbered 15 and 16, concerning the election of the initial member-

ship and the preparatory work to be undertaken, pending that election, to organize the work of the commission.

4. In his opinion, the arrangement of part II of the operative section would have been more logical if paragraph 5 had come immediately after paragraph 2.

5. In conclusion, he thanked the Chairman of the Committee and the United Nations Secretariat for their assistance to the sponsors of the draft resolution during the negotiations and expressed the hope that the text would be favourably received.

6. Mr. CORREA (Mexico) said that the first task of the future United Nations commission on international trade law, which was to have the twofold function of making international trade more flexible through the unification and harmonization of national laws relating to commercial transactions and of preventing national laws from constituting obstacles to the opening of new trade channels, would be to promote the adoption by States of model laws or uniform laws. That very difficult task had been carried on with only very partial success by the existing organizations, which had lacked, in particular, the authority that the new commission would enjoy as an organ of the United Nations General Assembly. On that point, however, there was an omission in the draft resolution which might give rise to a number of problems. The draft provided that the future commission would have the task of preparing and/or promoting the adoption of new international conventions, model laws and uniform laws; but nowhere was there any mention of the formulation by conferences of plenipotentiaries of international conventions relating to such model laws or uniform laws. Because of that lack of precision, those laws might appear to represent the final outcome of the commission's work and the commission's terms of reference might then be interpreted as giving it quasi-legislative functions that the United Nations Charter reserved to the domestic jurisdiction of States, with the result that the commission would infringe upon the sovereignty of those States.

7. It should be made clear, therefore, that it would be the future commission's sole task to prepare "drafts" of model laws and uniform laws, by which the Member States, having regard to all the factors involved, would be guided in amending their civil and commercial legislation to the extent that they considered desirable and in the exercise of their sovereign rights.

8. Mr. HERRAN MEDINA (Colombia), in reply to the Mexican representative, explained that the sponsors of the draft resolution under consideration had no intention whatsoever of authorizing the slightest interference in the domestic affairs of States. Under

\*Resumed from the 953rd meeting.

subparagraph 10 (c), the future commission's sole task would be to prepare model laws and uniform laws. It would then be for States to consider incorporating all or part of those texts in their own legislation for purposes of harmonization and unification. As the Spanish text might be found ambiguous, he proposed that the opening words of the subparagraph in question should be reworded as follows: "El fomento de la aprobación, o la preparación, o ambas cosas".

9. He would like the Sixth Committee's report to contain an expression of the Committee's gratitude to the Hague Conference on Private International Law and to the International Institute for the Unification of Private Law (UNIDROIT) and its hope that those two organizations would maintain relations of fruitful collaboration with the future commission.

10. Mr. ROSENNE (Israel) congratulated the sponsors of the draft resolution on the successful outcome of their negotiation. He was gratified to find expressed in paragraphs 15 and 16 ideas that his delegation had advanced in the course of the debate. At the same time, he expressed the hope that the resolution would not be interpreted and applied with excessive rigidity.

11. He still found the expression "and/or" in the English text of operative subparagraph 10 (c) ambiguous and almost unintelligible, inasmuch as it made it necessary to refer to the other original language version for clarification. He thought, moreover, that that ambiguity might give rise to questions of substance. The difficulty could perhaps be removed either by replacing the expression to which he objected by the word "or" or by simply deleting the opening words of the subparagraph, which would then begin, in the English text, with the words "promoting the adoption".

12. Mr. MALLA (Nepal) welcomed the fact that thanks to the efforts of the United Nations Secretariat, the assistance of the experts it had consulted and the co-operation of such organizations as UNIDROIT and the Hague Conference on Private International Law the year that had elapsed since the adoption of General Assembly resolution 2102 (XX) had brought the United Nations to the threshold of active participation in the development of international trade law.

13. The function of the United Nations would be primarily one of co-ordination; nevertheless it would be desirable for the Organization not to be confined to a co-ordinating role but to be authorized to perform formulating functions as well. It would undoubtedly be easier to make progress in harmonizing national laws when the countries involved had similar socio-economic systems. But many countries that were geographically and ideologically far removed from one another nevertheless engaged in trade. The legal obstacles to trade between such countries could be reduced only by harmonization on a world-wide scale. Progress in that field had always met with considerable difficulties, and those difficulties—both those inherent in any attempt to bring about changes in national legislation and practices and those due to the limited membership and authority of existing formulating agencies—had not yet been removed. Moreover, traditional international law, which had come into being at a time when the developed countries with

free-enterprise economies had dominated the world political scene, was passing through a period of readjustment rendered inevitable by the need to take account both of changed values and of the legitimate aspirations of the developing countries. The latter were most anxious to see the legal obstacles to their international trade eliminated and considered that the steps taken to promote the progressive development of international trade law should seek, above all, to strengthen international trade on the basis of co-operation among States and in conformity with the principle that economic development in general should benefit the whole international community.

14. On behalf of the sponsors, he expressed the hope that the draft resolution would be adopted by an overwhelming majority.

15. Mr. BRAZIL (Australia) said that his country, which had a sizable amount of foreign trade, was particularly interested in the harmonization and co-ordination of the law of international trade. Moreover, it had been at the initiative of Australia that the Regional Law Association for Asia and the West Pacific, covering the same region as the Economic Commission for Asia and the Far East, had been established, with a work programme that included the study and development of law relating to imports and exports. The Association's headquarters, for the first five years, would be situated in Australia.

16. The draft resolution before the Sixth Committee (A/C.6/L.613/Rev.3) concerned the establishment of a body having for its object the promotion of the progressive harmonization and unification of the law of international trade. As his delegation interpreted it, that body would concern itself with the laws regulating trade relations of a private law character between countries and not with transactions under public law carried out by such countries in their capacity as sovereign States. However, before establishing a new body, the Committee should be sure that it was absolutely essential. In order to consider that issue, which was very well set out in the Secretary-General's report (A/6396 and Corr.1 and 2), it would have been better if the Committee could have had more time, for example, to examine the possible alternatives to setting up a new body and the need to avoid the proliferation of international bodies and any duplication of activities. The discussions in the Committee, however, had shown that most members favoured an immediate decision.

17. His delegation wished to pay a tribute to the sponsors of the joint draft resolution for their constructive attitude towards the proposed amendments and welcomed the alteration made to operative paragraph 13, which made it clear that the commission could use the services of existing organizations. The new commission could derive great benefit from the experience of existing organizations, such as UNIDROIT and the Hague Conference on Private International Law.

18. His delegation would therefore support the joint draft resolution and associated itself with the hope expressed by other delegations that the new commission would make an important contribution to the law of international trade. Achievements should not

be expected to be quick or easy, but his delegation looked forward to the progressive accomplishment of steps towards unification and harmonization that would bring mutual benefits to all.

19. Mr. WERSHOF (Canada) said that he shared the Australian representative's reservations about the need to take an immediate decision regarding the establishment of a new permanent United Nations body, the cost of which was far from negligible. But as the majority seemed convinced that the expenditure was justified, his delegation would vote in favour of the draft resolution. It hoped, however, that before that text was voted upon, its sponsors would accept the amendment to operative subparagraph 10 (c) proposed by the representative of Israel, who had justifiably criticized the words "and/or", which, although often used in legal language, were better avoided. The French text, which was completely satisfactory, could be taken as a guide.

20. Mr. HARGROVE (United States of America) proposed that the word "and" in the first line of the English text of operative subparagraph 10 (c) should be deleted, although his delegation found nothing wrong with the expression "and/or"; he also proposed that the word "promoting" should be inserted before the words "the codification" in the second line of that paragraph.

21. Mr. ENGO (Cameroon) said that the matter in question was one of grammar and not of substance; his delegation was prepared to accept any wording that would express the sponsors' intention in good English.

22. Mr. ROSENNE (Israel) said that the amendments proposed by the United States representative met the Israel delegation's concern on a point that it had raised not merely for grammatical reasons but for the sake of preciseness.

23. Mr. SPERDUTI (Italy) observed that if, as the United States representative proposed, the word "promoting" was inserted in the second line of the English text of operative subparagraph 10 (c), that paragraph would be divided into two propositions linked by the word "and"; difficulties might then arise regarding the words "in collaboration", inasmuch as it would not be clear whether they related to the paragraph as a whole or only to the second proposition. In order to avoid the latter interpretation, it might be advisable to place the words "in collaboration" at the beginning of operative subparagraph 10 (c).

24. Mr. USTOR (Hungary) said that the words "in collaboration" obviously applied to operative subparagraph 10 (c) as a whole. If necessary, a note to that effect could be included in the report of the Sixth Committee, because in order to give effect to the Italian representative's suggestion the wording of that subparagraph, which had already been reworked several times, would have to be completely redrafted.

25. Mr. SPERDUTI (Italy) said that he would not press his proposal, provided that the report of the Sixth Committee noted that the words "in collaboration" applied to all the activities mentioned in operative subparagraph 10 (c).

26. Mr. MARTINEZ CARO (Spain) observed that if the word "and" was deleted from the English text in the draft resolution, the words "o ambas cosas" should perhaps be deleted from the Spanish text.

27. Mr. HERRAN MEDINA (Colombia) said that he would prefer to keep those words in the Spanish text; although stylistically not too felicitous, they at least had the merit of being clear.

28. Mr. SINHA (India) appealed to the members of the Sixth Committee not to press for alterations in the text of the draft resolution as it stood, which, although it perhaps lacked elegance, did express sufficiently clearly the intentions of its sponsors. Any desired clarification, of course, could be included in the Committee's report.

29. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that in the last analysis it had been the will to co-operate that had enabled the delegations participating in the consultations to finalize the text contained in document A/C.6/L.613/Rev.3 and to agree, in particular, on the formula for the distribution of the seats in the proposed commission, although the solution arrived at was not very satisfactory to some delegations, including that of the USSR. The question of representation was especially difficult, inasmuch as the progressive development of the law of international trade was not unconnected with the domestic legislation of States. In that field it was desirable to take decisions by common agreement rather than by a vote. That was why it was important at the current stage to have the support of all delegations, as a token of a common will to ensure the success of work in the future. His delegation was prepared to support the draft resolution in its latest revised form. The English text of operative subparagraph 10 (c) was acceptable as it stood. His delegation would like the Russian text to reflect that wording more precisely.

30. Mr. YANKOV (Bulgaria) agreed with the representative of India that the Committee should refrain at the current stage of the debate from making any further changes in the draft resolution. His delegation acknowledged, however, that the representative of Italy had been right in stating that the commission would be unable to engage in codification itself. Only the consent of States, signifying their acceptance of the rules drafted by the commission, would make codification possible, and operative subparagraph 10 (c) should be seen in the light of that fact.

31. Mr. HERRAN MEDINA (Colombia) suggested that in operative paragraph 3 of the Spanish text of the draft resolution the word "elegirá" should be replaced by the word "designará", which was more appropriate for a selection made by the drawing of lots.

32. Mr. VANDERPUYE (Ghana) said that, all consideration of grammatical correctness aside, his delegation saw no reason not to retain the words "and/or", which were commonly used in traditional Anglo-Saxon legal practice. However, he would not oppose the proposed amendments, which made no substantive changes.

33. The CHAIRMAN invited delegations wishing to do so to explain their votes before the vote.

34. Mr. CORREA (Mexico) said that his delegation would vote for the draft resolution (A/C.6/L.613/Rev.3), in view of the explanation given by the representative of Colombia. He approved the Spanish text of operative subparagraph 10 (c), as amended.

35. Mr. ALCIVAR (Ecuador), speaking on behalf of his own delegation and of the delegations of Bolivia, Colombia, Honduras, Jamaica, Mexico, Panama, Paraguay, El Salvador, and Uruguay, said that the distribution of seats indicated in operative paragraph 2 of the draft resolution did not take into consideration the realities of Latin America and was therefore not equitable. Those of the delegations for which he spoke that did sponsor the draft had made their views on that point known during the preparation of the revised version. He would stress that the votes that would be cast for the draft resolution should not be taken as evidence of satisfaction with a distribution that was unfair to Latin America and that the solution adopted in the current instance should not constitute a precedent for the future.

36. Mr. MOLINA (Venezuela) said that he associated himself with the Ecuadorian representative's statement. Although his delegation had not taken part in the discussions, it had examined very carefully the problem of the commission's membership, and it felt that by the decision to set the total number of seats at twenty-nine equitable representation of the Latin American States had been sacrificed. The latter once again had shown their desire to co-operate, but the unfair solution adopted must not be taken as a precedent.

37. Mr. MUSSA (Somalia) said that his delegation whole-heartedly endorsed a draft resolution that was fully in keeping with the spirit of Article 1, paragraph 3, of the United Nations Charter.

38. Mr. ENGO (Cameroon) said that his delegation, together with those of many African and Asian countries, associated itself with the views expressed by the Latin American countries on the distribution of the seats in the proposed commission. It was extremely important to emphasize that acceptance by a particular group of countries of inadequate representation, out of a desire for compromise and in connexion with a specific subject, could not be regarded as constituting a precedent or a commitment for the future.

39. Mr. HARGROVE (United States of America) said that his delegation would vote in favour of the draft resolution. He wished, however, to stress that it was not entirely satisfied with the distribution of seats proposed in operative paragraph 2. It considered that the "Western European and other States" should have been more widely represented, if only out of consideration for the important position they occupied in the organizations with which the commission would have to collaborate. Nevertheless, his delegation was gratified by the swiftness with which agreement had been reached on the organization of the new commission and expected that the decisions that were to be taken at the twenty-second session would prove highly fruitful.

40. Mr. MALLA (Nepal) endorsed the views expressed by the Cameroonian representative. Inasmuch as

Nepal, like the other Asian countries, wished to show goodwill and a spirit of compromise, it would vote in favour of the joint draft resolution.

41. Mr. ADJIBADE (Dahomey) said that his delegation had some serious misgivings about the somewhat premature establishment of the proposed commission. It felt that it would have been preferable to postpone the decision on the matter, so as to allow time for more lengthy consideration. However, as there was a large majority in favour of the proposed solution, his delegation would support it also. In doing so, it associated itself with the comments made by the Cameroonian representative and hoped that in the future Africa would be more widely represented.

42. Mr. LEMAITRE (France) said that out of consideration for the wishes of the majority his delegation would vote in favour of the draft resolution. It shared the view expressed by the delegations of Canada and Australia. During its first few years, the new commission should devote itself exclusively to the task of co-ordinating the work of other organizations, without considering matters of substance. A proper study could then be made of the consequences of the proposed United Nations action in the sphere of international trade law and of the financial implications of the new body's operation.

43. The CHAIRMAN pointed out that the following amendments should be made to the draft resolution contained in document A/C.6/L.613/Rev.3:

(a) The text of operative paragraph 5 should be transferred to the end of paragraph 2.

(b) Paragraphs 6-16 should accordingly be re-numbered 5-15.

(c) The paragraph numbers referred to in the former paragraph 15 should be changed accordingly.

(d) In the Spanish text of the draft resolution, the word "designará" should be substituted for the word "elegirá" in paragraph 3, and the first part of subparagraph 10 (c) should read: "el fomento de la aprobación, o la preparación, o ambas cosas, de nuevas convenciones".

(e) In the English text of the draft resolution, subparagraph 10 (c) should read: "preparing or promoting the adoption of new international conventions ... and promoting the codification and wider acceptance ...".<sup>1/</sup>

44. After stating that the Secretariat would ensure that any necessary changes were made in the French and Russian texts to take account of those amendments, he invited the Committee to vote on the joint draft resolution, as amended.

*The Committee unanimously adopted the draft resolution (A/C.6/L.613/Rev.3) as orally modified.*

45. Mrs. TSATSOS (Greece) said that as a sponsor of the draft resolution, her delegation had voted in favour of it. She wished to emphasize, however, that according to the Secretary-General's report the new commission should be composed of eminent legal experts. That requirement should be strictly observed,

<sup>1/</sup> In drawing up the final text of the draft resolution adopted by the Sixth Committee the numbering of the paragraphs in the three operative parts was changed to conform to United Nations editorial style.

at least during the early years of the new organization. The allocation of only eight seats to western European and other States might prove detrimental to the commission's work.

46. The CHAIRMAN announced that the Committee's consideration of agenda item 88 had been concluded.

Completion of the Committee's work

47. After the customary exchange of courtesies, the CHAIRMAN declared that the Sixth Committee had concluded its work.

*The meeting rose at 6.15 p.m.*

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