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CONTENTS

Chairman: Mr. Vratislav PĚCHOTA (Czechoslovakia).

AGENDA ITEM 88

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

1. Mr. TSURUOKA (Japan) said that Japan fully understood from its own experience how important international trade was to all countries, particularly developing ones. It would be interested in any further development of "the law of international trade" or "the body of rules", as defined in paragraph 10 of the Secretary-General's report (A/6396 and Corr.1 and 2).

2. Efforts to harmonize and unify law and practice in international economic life had been made by various organizations, including United Nations bodies and such organizations as the International Institute for the Unification of Private Law (UNIDROIT) and the Hague Conference on Private International Law. But there had not so far been sufficient co-ordination of their efforts, and participation in them had been limited numerically, geographically or otherwise. It therefore seemed desirable that the United Nations should attempt to survey the field as a whole and co-ordinate the activities of the various organizations. The Secretary-General stated in his report that the International Law Commission did not believe that it would be appropriate for it to undertake the progressive development of the law of international trade (see A/6396, para. 5) and that there was no existing United Nations organ with the technical competence and the time to do so (ibid., para. 255). In view of the highly technical and complex nature of the work, therefore, his delegation felt that the best possible solution would be the establishment of a United Nations commission on international trade law, consisting of States representing different types of economies and legal systems and different stages of development, and based on the principle of equitable geographical distribution. Its task would not be an easy one. As pointed out in paragraph 204 of the Secretary-General's report, unification was not necessarily desirable per se, but only when there was an economic need and when it would have a beneficial effect on the development of international trade. International trade was actually functioning, and a radical change in applicable law, even if appropriate in theory, could prove unworkable or confusing or inimical to the further development of trade. Practicability and prudence therefore should be the guiding principles behind the proposed commission's work. Furthermore, care should be taken that the establishment of the commission did not lead to duplication of effort but helped to further the activities of other organizations.

3. As far as the draft resolution in document A/C.6/L.613 was concerned, his delegation, although believing it essential to establish a stable and harmonious legal foundation for the further development of international trade and supporting the creation of a new commission, considered that, apart from the financial implications, there should be further study of the proposed commission's functions from the standpoint of practicability.

4. Mr. NACHABE (Syria) expressed appreciation for the Secretary-General's report. The survey in chapter II of the work already done by intergovernmental and non-governmental organizations showed that particular progress towards the unification and harmonization of international trade law had been made on such matters as industrial property, air, sea and land transport, the international sale of goods, the erection of plant and machinery abroad, negotiable instruments and commercial arbitration. He paid a tribute to UNIDROIT and the Hague Conference on Private International Law for their achievements in that respect. Chapter III of the report showed that the three methods of harmonization and unification mentioned in paragraphs 190-193 had proved their worth and thus offered good prospects for the future. But there were still obstacles to progress. As indicated in paragraph 203 of the report, harmonization was easier in technical branches of law than in subjects closely connected with national traditions and basic principles of domestic law. A similar point had been made by the Secretary-General of UNIDROIT in his statement to the Sixth Committee (946th meeting). The proposed United Nations commission should concentrate on such difficulties. It should be broadly and equitably representative and include members from free-enterprise and centrally planned economies and from developed and developing countries.

5. In paragraph 210 of the report, the Secretary-General referred to other obstacles, in particular to the insufficient participation of the developing countries in the efforts made so far to unify and harmonize trade law, the fact that none of the existing formulating agencies enjoyed world-wide acceptance or had a balanced representation of the different kinds of economy, and the lack of co-operation and co-

ordination among such agencies. The report therefore suggested that the United Nations should co-ordinate the activities of the existing bodies and also take the initiative with regard to unification measures. The creation of a special organ for the purpose was considered necessary, and his delegation supported the recommendations made in paragraphs 226-228 of the report concerning its composition and functions. It would vote in favour of the draft resolution in document A/C.6/L.613.

6. Mr. TERCEROS BANZER (Bolivia) said that the excellent report prepared by the Secretary-General would provide a basis for further progress. As stated in paragraph 216 of the report, there had so far been a "legal lag" in the development of international trade law, by comparison with the progress made in economic co-operation and the expansion of international trade. Further efforts must therefore be made to formulate trade law as proposed in the draft resolution in document A/C.6/L.613, of which his delegation was a sponsor. As a country whose economy depended on the export of primary commodities, Bolivia considered it essential to supplement the rules of trade policy formulated by the United Nations Conference on Trade and Development (UNCTAD) and the General Assembly with rules of law, which, by definition, would be binding. In its view, the conclusions reached by the Secretary-General in paragraphs 213-224 of his report were correct. The unification and harmonization of international trade law was an appropriate field for United Nations action and an activity consistent with General Principle Six of UNCTAD, which stated that international trade should be governed by rules consistent with the attainment of economic and social progress and not hampered by measures incompatible therewith.1/

7. There could be no doubt about the need to co-ordinate the work of the proposed United Nations commission with that of other organizations active in the field, whose achievements were generally recognized. Far from duplicating work or dissipating resources, the proposed commission would give added momentum to the activities of the existing agencies and should itself draw on their experience and facilities for the general benefit. He paid a tribute to UNIDROIT, the Hague Conference on Private International Law, the International Chamber of Commerce and other formulating agencies for their past achievements. In addition to its co-ordinating role, the new commission should also have powers of formulation, as indicated in paragraph 221 of the Secretary-General's report. It should take steps to prepare and promote the adoption of international instruments, ranging from the formulation of standard clauses and model laws to actual codification, and should concern itself with conventions on specific subjects, uniform acceptance of international trade customs and practices and accession to existing trade conventions.

8. So far as the membership of the commission was concerned, his delegation would favour a group of twenty-four, which would make possible representation of countries at different stages of development, from different geographical areas and with different legal systems. It had no definite views on the commission's meeting place. Economy suggested United Nations Headquarters, although the need for liaison with UNCTAD suggested the European Office. The matter might be left to the Secretary-General, but his delegation would concur in a majority decision. The election of members of the commission should be postponed until the next session of the General Assembly to allow time for consultations. Meanwhile, the Secretariat might continue to make administrative and technical preparations and might circulate a questionnaire to Member States requesting their opinion on the main points to be taken into account by the commission when it discussed its rules of procedure and the details of its functions.

9. Mr. LANNUNG (Denmark) said that action by the United Nations in the progressive development of the law of international trade would undoubtedly be of great practical importance, from both the legal and the economic points of view. The task, however, was not an easy one. Various international organizations had done and were doing valuable work in the field, but they suffered from certain short-comings. In particular, there had been insufficient co-ordination and co-operation among them, their membership and authority were too limited and there had been too little participation by the developing countries. Fortunately, the excellent report of the Secretary-General would provide a good basis for remedying the situation.

10. Like many other European countries, Denmark had long experience in the field of the harmonization of law. It had taken part in efforts at various levels, in the Nordic Council, the Council of Europe, the European Free Trade Area and the Economic Commission for Europe. It had always been in favour of taking action on as wide a basis as possible and therefore noted with satisfaction that one of the main tasks of the proposed United Nations commission would be to co-ordinate the many activities pursued by different organizations at different levels. Such co-ordination would prevent overlapping and conflicting solutions. The draft resolution (A/C.6/L.613) would also entrust the commission with the task of formulating texts. In that connexion, he was pleased to note a general reference to the desirability of the commission's drawing upon the experience of existing organizations, in particular UNIDROIT and the Hague Conference on Private International Law, which had rendered important services to the international community. He would like to see a specific reference to those organizations in paragraph 11 of the draft resolution, with which his delegation was otherwise in full agreement. The Council of Europe, too, had promoted some very important conventions on the law of international trade, as pointed out in paragraphs 135-138 of the Secretary-General's report. His Government also attached great importance to the activities of the Economic Commission for Europe and its efforts to facilitate East-West trade. His delegation hoped that the work done by the regional economic commissions and by other international organizations active in the field could be utilized and co-ordinated through the proposed United Nations commission on international trade law, in order to facilitate and promote international trade between

1/ See Proceedings of the United Nations Conference on Trade and Development, vol. I, Final Act and Report. (United Nations publication, Sales No.: 64.II.B.11), p. 10.

free-enterprise countries and centrally planned economies and between developed and developing countries.

11. Mr. SINHA (India) said that his delegation was in favour of studying the legal aspects of international trade. As the 1964 Cairo Conference of non-aligned countries had stated, peace must rest on a sound economic foundation and international co-operation based on equality, and the needs of economic development must be intensified. The unification of private law on international trade would contribute to those ends. National law was a reflection of the economic and social system existing in the State concerned, and different systems might therefore yield different legal solutions. All would benefit from a simplification and harmonization of the different legislations, and steps in that direction had already been taken. The Committee was familiar with the work of such bodies as UNIDROIT and the Hague Conference on Private International Law, and there could be no doubt that any body established by the United Nations should work in close co-operation with them. He also wished to draw attention to the work of the Asian-African Legal Consultative Committee, a relatively new organization, the co-operation of which should be sought by other bodies active in the field.

12. His delegation wished to express its appreciation to those responsible for the Secretary-General's report. Together with the other sponsors of the draft resolution put forward in document A/C.6/L.613 and Add.1 and 2), it had made and was making every effort to incorporate suggestions in the text, in the hope of arriving at a generally acceptable proposal. It considered that the commission proposed in the draft resolution should work in the closest co-operation with UNCTAD. Only thus could its objectives be achieved, inasmuch as UNCTAD had primary responsibility for the substantive aspects of the subject. The General Assembly should not act upon the reports of the new commission without first obtaining UNCTAD's views on them. On the points remaining to be settled in the draft resolution, such as the size of the commission and its place of meeting, his delegation reserved the right to speak later if necessary.

13. Mr. OGUNDERE (Nigeria) said that the Secretary-General's report showed that there was a real need for the establishment of a permanent United Nations organ that would be responsible for the systematic study of the rules and practices of international trade law, with a view to its progressive development and harmonization. UNIDROIT and the Hague Conference on Private International Law had made useful contributions in that field, but because of their restricted membership, their work and influence were of limited value. Moreover, both lacked that central direction and purpose which in the new pattern of international relations between States could be given only by the United Nations. In order to command the respect of the new countries of Asia and Africa, there was obviously a need for a new United Nations organ that would duplicate, in the legal field, the work so brilliantly begun by UNCTAD in the economic field. To an increasing extent, the developing countries were participating in general multilateral treaties, particularly in the field of trade, on which their plans for economic and social development were, in the last analysis, dependent. With respect to international trade law, those countries could no longer be expected to remain satisfied with the status quo ante; trade laws and practices would have to be reviewed and compared by representative experts from all States Members of the United Nations, meeting together in a central forum. The role that the United Nations could play in that respect had been admirably summed up chapter IV, section 3, of the Secretary-General's report. Some fears had been expressed that the establishment of a United Nations commission on international trade law might spell the doom of the organizations currently engaged in that field, but in his opinion they were groundless; many of those organizations would continue to function as before and would be able, in fact, to provide the commission with much useful material. Nor would the proposed commission duplicate in any way the work being done by the International Law Commission, inasmuch as the latter was primarily engaged in the comprehensive development of international public law and activity of the new commission would be devoted exclusively to the study of international private trade law.

14. The proposed commission should consist of not less than twenty-one and not more than twenty-eight members. Their professional qualifications should be clearly defined, and membership should be limited to persons of recognized competence in the field of international trade law. Subject to that fundamental requirement, the members should be chosen on the basis of equitable geographic representation and should also be representative of the main legal systems of the world. They should be elected for a five-year term, and, in order to ensure continuity in the commission's work, they should be eligible for re-election. The modus operandi and general objectives of the new commission should conform to the general pattern set by the International Law Commission. Its work, however, should be directed towards the conclusion of international conventions rather than the formulation of codes. The Economic and Social Council and UNCTAD should also be closely associated with its work, and its reports should be submitted to the General Assembly for consideration by the Sixth Committee.

15. Trade was a universal activity, and the developing countries favoured a universal rather than a regional or subregional approach to the study of trade law. His delegation fully endorsed the outline of the commission's functions given in paragraph 227 of the Secretary-General's report and in operative paragraph 8 of the draft resolution (A/C.6/L.613). That outline could provide a useful basis for the new commission's statute, which could be drawn up by a small drafting committee before the election of members. The actual question of the commission's membership should be taken up by the Sixth Committee, after consultations, at the twenty-second session of the General Assembly.

16. Mr. BAL (Belgium) said that the excellent report prepared by the Secretariat had helped greatly to inform the Sixth Committee about the new and com-

plex problems arising in the field of international trade law. The studies made since 1965 confirmed the soundness of General Assembly resolution 2102 (XX) calling for action in the matter by the United Nations. In seeking to bring about the broadest possible expansion of international trade, it was essential to determine whether practical measures to that end were legally feasible and desirable. The importance of that task was particularly clear to his country, whose trading circles had very long experience of trade law. For centuries Belgian jurists had been active in working out rules of law that would enable Belgium to expand its trade with countries throughout the world. Several Belgian contributions had been cited by the Secretary-General in his report. Moreover, at the 946th meeting, the representative of Hungary had referred to the report submitted to the International Academy of Comparative Law in 1966 by Professor Limpens of the University of Brussels and the University of Ghent, concerning the desirability of establishing an international body to ensure a better flow of information to organizations engaged in the unification of international trade law.

17. If the United Nations was to undertake a concrete programme for the progressive development of trade law, it would clearly have to adopt a realistic method of work. Inasmuch as it was proposed to draft uniform rules that would find broad, practical application, the United Nations would have to consider the general problem of the quasi-legislative authority of its organs; at the same time, it should study in detail, in the particular field of international trade, the specific difficulties inherent in any attempt to state general rules that would be binding on a large number of countries. Several speakers had already stressed the very real economic, political and technological differences that still existed in international relations and obviously had repercussions on private international law. At the 949th meeting, for example, the representative of Iraq had emphasized the importance that must be attached to the question of conflicts of laws. Experience showed that attempts to introduce uniform rules were generally more successful when the latter were to apply in countries situated within the same geographic area or having comparable political and economic systems. In the latter case, however, serious difficulties were encountered with regard to certain parts of the law and that experience should be taken into account in any plans for action on a world level.

18. All efforts to promote the progressive development of trade law should clearly be based on a thorough knowledge of the work and experience of the governmental and non-governmental organizations already active in the field. In that connexion, he recalled that his own country had always participated actively in the work of UNIDROIT, The Hague Conference on Private International Law and the International Maritime Committee (IMC). As stated in paragraph 167 of the Secretary-General's report IMC was the only international organization currently dedicated exclusively to the unification of private maritime law on a global scale. Although in the past its conferences had always been held in Europe, a clear understanding of international trends had led to the abandonment of that tradition in 1965, when for the first time a meeting of IMC had been held on the American continent. That was one example of the willingness of existing international organizations to share their experience with all parts of the world and, at the same time, acquaint themselves with the points of view of those States that had not originally been associated with their work.

19. His delegation endorsed the conclusions in the Secretary-General's report concerning the desirability of establishing a body such as the proposed commission on international trade law with a view, in particular, to associating the newly independent countries as widely as possible in the study and development of trade law. Accordingly, it supported the main provisions of the draft resolution (A/C.6/L.613), although it might wish to comment on it in detail later on. For the present he would merely stress that all relevant factors should be borne in mind if the composition of the proposed commission was to be satisfactory. In the light of its long experience in the field of international trade law, Belgium stood ready to make any direct contribution it could to the work ahead.

20. Mr. TUERK (Austria) said that the Secretary-General's report clearly outlined the problems to be solved in the field of the progressive development of the law of international trade and contained adequate suggestions for their solution. In particular, it correctly explained the two ways in which the conflicts and divergencies arising from the trade laws of different States could be remedied—by the adoption of conflict of law rules and by the harmonization and unification of substantive rules. Those methods offered good prospects of success, inasmuch as there were hardly any fundamental differences between the main legal systems of the world regarding trade law. But although the report rightly spoke of the universal similarity of the law of international trade, much painstaking effort would still be required to achieve the desired harmonization and unification of that law.

21. A number of organizations were currently engaged in that difficult task and had already done excellent work. Nevertheless, it seemed desirable to provide for the proper co-ordination and supervision of those activities. The creation of an appropriate organ to exercise those functions would also give developing countries a greater chance to participate in the progressive development of that branch of law. The proposed United Nations commission on international trade law would be well fitted to perform those functions, but it should not try to replace the existing agencies that had proved so valuable in the past. The commission, for example, might conceivably have formulating functions that could be more effectively carried out in consultation with existing formulating agencies. Although its membership should be world-wide, that fact should not be permitted to lead to the adoption of compromise texts on the basis of the lowest common denominator.

22. Countries should also be encouraged to adopt the international trade instruments already in existence, inasmuch as that would seem the best way to achieve greater harmonization and unification in the field of trade law. In view of the great importance of the uniform interpretation and application of inter-

national trade conventions, his delegation appreciated the willingness of UNIDROIT to place its studies and conclusions on that subject at the disposal of the United Nations.

23. With respect to the draft resolution in document A/C.6/L.613, his delegation endorsed the suggestion that it might be preferable to postpone the election of the members of the commission to a later date. It also felt that the draft resolution should refer specifically to UNIDROIT and the Hague Conference on Private International Law because of the fruitful work they had done so far. Furthermore, it had certain apprehensions concerning the draft resolution's financial implications. In principle, it was prepared to support the draft resolution but might wish to speak again on the subject when the revised text that was being prepared had been circulated.

24. In conclusion, he drew the Committee's attention to the problem of the scarcity of qualified personnel within national administrations and parliaments able to devote itself to the work of incorporating international trade instruments into the national legal order. If no remedy was found for that problem, the progressive development of the law of international trade might be a rather slow process in spite of the establishment of the commission.

25. Mr. ALCIVAR (Ecuador) observed that in spite of the discretion granted it under article 1 of its Statute, the International Law Commission had been compelled by circumstances to limit its work to the field of public international law and had, as yet, been unable to enter the field of private international law. The imperative needs of the atomic age, however, had at last forced the United Nations to take action in the sphere of private international law, particularly with respect to trade law. Undoubtedly, the most serious world problem was the great economic imbalance between the nothern and the southern hemispheres and between the developed and the developing countries. That problem affected all spheres of social life, and law was no exception. As trade had developed throughout the centuries, it had always reflected the characteristics of the prevailing economic system, and the legal relations arising out of those systems had had to be adapted to the realities of each age.

26. Mankind was living in an era of extreme contradictions, and although the world, as the result of technical progress, was becoming ever smaller, human solidarity had not yet been achieved, and the international community based on justice was still remote. Moreover, international co-operation was still viewed as a form of charity, and the world could be described as a Greek tragedy in which there were few actors and many extras. That situation had led to a decline in the prices of primary commodities, which were the main, often the sole, source of income of the developing countries. At the same time the latter had to pay the high prices imposed on them by the industrialized countries for their goods. There was, however, a growing realization that international trade should be carried out along just lines and in a spirit of universality. To achieve that purpose, the United Nations Conference on Trade and Development had been held in 1964 at Geneva, where the small countries had finally outlined the path that should be taken in the future.

27. That had been the background for the adoption by the General Assembly of resolution 2102 (XX), requesting the Secretary-General to submit to it, at its twenty-first session, a comprehensive report on the progressive development of the law of international trade. That report was an admirable one and fully deserved the praise it had already received. Also praiseworthy was the work being done in that sphere by various intergovernmental and non-governmental organizations, including the Inter-American Council of Jurists, the International Institute for the Unification of Private Law and the Hague Conference on Private International Law. But even though those and other organizations were achieving valuable results, the co-ordination of the various efforts devoted to the law of international trade should be the responsibility of the United Nations, which should, if its financial situation permitted, establish a specific organ for that purpose, as proposed in the draft resolution set forth in document A/C.6/L.613. His delegation might wish to comment on tnat draft resolution at a later stage.

28. Mr. SECARIN (Romania) said that trade was one of the most important and dynamic elements of co-operation among States. The need for the international exchange of goods was objective—a product of the uninterrupted growth of national economies and the improvement of means of transportation and communication. Moreover, the newly independent nations, which had finally secured permanent sovereignty over their national wealth and natural resources, had an interest in developing their international trade in order to obtain, through exchange, the funds needed to build their economies and to ensure a better life for their peoples. The development of international trade, therefore, would meet real needs of the international community; it would be an essential contribution to the common efforts to create, in the words of Article 55 of the United Nations Charter, conditions of stability and well-being, which were necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. Accordingly, it was necessary to establish rules that would facilitate commercial transactions on the basis of respect for sovereignty and national independence, non-intervention in the domestic affairs of States and mutual benefit. The efforts already made in that direction had been fully described in the Secretary-General's report. He stressed the attention that UNCTAD and other United Nations organs had given to such questions, and paid a tribute to the work of UNIDROIT and the Hague Conference on Private International Law. The General Conditions of Sale and Standard Forms of Contract formulated under the auspices of the United Nations Economic Commission for Europe were of the greatest importance, their rather wide dissemination undoubtedly being due to their optional character.

29. The Sixth Committee must take advantage of the experience gained in the past. One of the reasons for the relatively modest results so far obtained was the multiplicity and diversity of trade relations. The

legal aspects of those relations must be dealt with in a more organized manner, according to an appropriate system, and there must be close co-operation between legal specialist and experts in the science and technique of trade. The United Nations should undertake that task.

30. Romania was very anxious to expand its trade with all countries and was therefore particularly interested in the progressive development of international trade law, inasmuch as article 1, paragraph 2, draft resolution on that subject submitted at the fourth session of the United Nations Trade and Development Board,[2/] as well as the draft resolution (A/C.6/L.613 and Add.1 and 2) currently under consideration by the Sixth Committee. Accordingly, his delegation fully supported the establishment of a United Nations commission on international trade law. Because of the complex nature of that commission's work, it should have a sufficiently large membership. The Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States provided a useful precedent. Moreover, in a larger commission, there could be more adequate representation of the various economic and legal systems and of the developed and developing countries, and the work could be better organized. Inasmuch as the proposed commission must co-operate closely with UNCTAD, its headquarters should be at Geneva. In order to take advantage of past experience, the proposed commission should establish co-operative relationships with organizations of specialists, such as UNIDROIT and the Hague Conference on Private International Law.

31. Mr. EL ARABY (United Arab Republic) said that his country, as a developing country, fully recognized the benefits that could be derived from the unification of the law of international trade. His delegation was pleased that the Secretary-General's report stressed the need to eliminate all obstacles and barriers hampering the expansion of international trade.

32. His delegation had originally been inclined to assume that the International Law Commission would be a suitable organ for the development of international trade law, inasmuchas article 1, paragraph 2, of the Commission's Statute stated explicitly that the Commission was not precluded from entering the field of private international law. However, because the International Law Commission, in view of its manifold activities and responsibilities, did not believe that it should become responsible for work in the field of the progressive development of the law of international trade, his delegation fully supported the establishment of a United Nations commission on international trade law.

33. During recent years, the Sixth Committee's attention had been drawn to the necessity of extending the scope of United Nations legal activities to new fields, and international trade law had been mentioned as a suitable topic for progressive development. The law of international trade had been correctly defined in paragraph 10 of the Secretary-General's report as the body of rules governing commercial relationships of a private law nature involving different countries. In his delegation's view, the codification of those rules was the direct responsibility of the General Assembly, under Article 13 (a) and (b) of the Charter. His delegation, of course, realized that much had already been achieved by the organizations and institutions dealing with the unification of that branch of international law. As a developing country, the United Arab Republic had a special interest in strengthening and intensifying existing efforts. Universal and adequate representation of various economic systems in different stages of economic growth was imperative, if those efforts were to be fruitful. The proposed United Nations commission on international trade law should possess those qualities.

34. The item before the Sixth Committee, although a legal one, undoubtedly had an economic aspect. His delegation, accordingly, wished to stress the importance of complete collaboration between the proposed commission and other United Nations bodies in the economic field, especially UNCTAD.

35. Mr. BREWER (Liberia) said that whereas association in the community of nations had for many years been restricted to a select few, membership in the club was now open to all States able to meet a reasonable standard acceptable to the majority. That change, among others, had been responsible for a new awareness of, and emphasis on, international law.

36. UNIDROIT and the Hague Conference on Private International Law had been concerned for some time with the harmonization and unification of international trade law. However, the composition of those two organizations showed how restricted and limited their scope of operation and sphere of influence had been. UNIDROIT, with a membership of forty-three, had some eighteen members from developing areas, and not all eighteen were developing countries. Only three members of the Hague Conference on Private International Law, which had a membership of twenty-four, were from Asia or Africa, and all three were further advanced than most developing countries.

37. In the third or contemporary stage in the development of the law of international trade, referred to in paragraph 20 of the Secretary-General's report, account must be taken of the different economic and legal systems in the contemporary world, and consideration must be given to existing conditions in developing countries. Consequently, his delegation developing countries. Consequently, his delegation was glad that the question of the progressive development of the law of international trade had been included in the agenda of the General Assembly.

38. Although the question was of immense importance to developing countries, it was not intended to favour them over developed countries. Its principal effect would be to enable the developing nations to help formulate the regulations governing the activities in which they were involved. Those nations would no longer have to accept and have their actions governed by rules in the formulation of which they had had no say. Inasmuch as commerce affected all nations and was so basic, international co-operation in accordance with Article 13 (b) of the Charter could surely be achieved with respect to the laws governing commerce.

2/ Document TD/B/L.98, mimeographed.

39. The unification and harmonization of international trade law was an appropriate subject for United Nations action, because of the Organization's over-all role in maintaining international peace and security, achieving international co-operation and acting as a centre for harmonizing the actions of nations. The United Nations was in the best position to reduce conflicts and divergencies arising from the laws of different States in matters of international trade. Accordingly, his delegation supported the establishment of a United Nations commission with responsibility for co-ordinating activities in that field. The proposed commission, as a United Nations organ, could easily co-ordinate its activities with those of UNCTAD, with a view to arriving at the practical solutions which the developing countries, in particular, were seeking in international trade. His delegation urged States that were not members of UNIDROIT and the Hague Conference on Private International Law to take a closer look at those organizations and at the various conventions and draft conventions prepared by them.

40. Mr. KEARNEY (United States of America) said that the draft resolution that his delegation had co-sponsored (A/C.6/L.613 and Add.1 and 2) would mark another step forward in the continuing efforts to establish a permanent régime of peace solidly based upon the rule of law. As Dean Graveson, an acknowledged leader in the field, had pointed out, international trade required a body of law that was also international, and the logic of the movement towards one world was one law in those areas where uniformity was necessary and convenient.

41. One of the most striking aspects of the law of international trade was the substantial similarity among the legal systems concerned, irrespective of economic, political and social differences. The legal systems of the common law countries and the civil law countries, of free and planned economies and of highly developed and less developed States all had much in common in that field. As Professor Trammer of Poland had observed, international trade specialists of all countries spoke a common language.

42. Because of that similarity it was feasible to seek to harmonize and unify the rules governing commercial relationships of a private law nature involving countries with different legal systems. Because the conflicts and divergencies arising from the laws of different States were not too deep or wide, the problem could be approached in the spirit of guarded optimism and confidence reflected in paragraph 222 of the Secretary-General's report. Nevertheless, the difficulties confronting efforts to unify the law of international trade should not be underestimated.

43. In that connexion, the national experience of his country might be of some interest. In the United States, jurisdiction with respect to private law matters was vested in the individual states of the Union. In theory there could be fifty different statutory or jurisdictional positions on a single point of law, and each of those positions would be valid in that state which had accepted it. During the 19th century, numerous and substantial differences in commercial law had developed among the states of the Union, despite the fact that each state had been part of a single economic system, had had a single language and had followed the common law. Despite those unifying factors, the divergencies had continued to grow until it had become essential to set up formal institutions to unify law in the United States. One such organization, the Conference of Commissioners of Uniform State Laws, composed of representatives of various states of the Union, was responsible for drafting uniform laws and promoting their adoption. Another organization, the American Law Institute, composed of eminent lawyers, judges and teachers of law, sought to harmonize law in the United States by the production of authoritative statements of prevailing concepts in the different fields of law, which were known as restatements. In carrying out their activities, both organizations had found it necessary to rely upon the services of experts in the field of law under consideration and to subject the work of those experts to a long process of review and revision.

44. Even under the favourable conditions of one language, one basic legal approach, one economic and social system and one country, the working out of uniform laws and authoritative statements of law had proved to be a complicated and laborious task, requiring expert and technical assistance, on the one hand, and the accommodation of varying viewpoints, on the other. When the same task was undertaken on an international scale, the difficulties were multiplied. On the basis of its relatively limited international experience in the unification of private law, his country was convinced that the unification of law on an international basis required the use of all available expertise in the field and very heavy reliance upon the past experience of organizations active in that sphere.

45. The Secretary-General's report reflected a full appreciation of the problems that the proposed United Nations commission on international trade law would encounter; as the representative of Hungary had said (946th meeting), it raised and answered the correct questions. The main problem was not a lack of organizations to do the technical work in the field but a lack of purposeful co-operation among formulating international agencies. That lack of co-operation existed, not because goodwill or the desire to co-operate was wanting, but because there was no institutional bridge across which information could be freely exchanged and resources shared. In their comments (A/6396/Add.1) both UNIDROIT and the Hague Conference on Private International Law had stressed the need for co-ordination. Consequently, his Government was in complete accord with the conclusion in paragraph 221 of the Secretary-General's report that the United Nations could perform a useful role in promoting contacts and encouraging collaboration between the existing formulating agencies, and in exercising some kind of supervision over their activities and initiating unifying measures. Furthermore, his Government thought that the United Nations might assume the function of suggesting, where appropriate, revision of existing draft instruments, that had failed to command the widest possible support because they were too narrowly based and of future draft instruments that failed to take full account of the need to develop a world law of trade. A body of

experts, such as the proposed United Nations commission on international trade law, might be uniquely qualified to draw on the work of regional agencies or regional trade arrangements, for example, and to make specific suggestions and recommendations to existing agencies having primary formulating responsibilities. On the basis of its own experience with the technical difficulties involved, his Government did not think that the proposed commission should itself engage to any considerable extent in drafting uniform laws.

46. The supervisory and co-ordinating roles suggested for the proposed commission differed from the formulating role of the International Law Commission because the two fields of work differed. Public international law was of enormous importance but limited dimensions. Furthermore, it was at a youthful stage; it had not hardened into a number of separate subjects, each with its own requirements of specialized knowledge and experience. Nor was it divided by the interposition of differing national legal systems or frozen by legislative enactments. Thus the formulating process could be entrusted to a single body of experts. In the law of international trade, however, it was impossible for any man to have sufficient knowledge and experience to deal with all problems that rose. Unification in such varying fields of law as sales, agency, negotiable instruments, shipping and rail transport could be handled successfully only by experts in those fields. In unifying the law of international trade, it was advisable therefore to rely for expert assistance upon organizations such as UNIDROIT and the Hague Conference on Private International Law, which had developed specialized knowledge over the years and had experience in formulating uniform rules of law on an international basis.

47. Utilization of existing machinery for the work of formulation would not lessen the responsibilities of the members of the proposed commission. In fact, it might increase those responsibilities, for it meant that the work of developing a world-wide body of trade law could be carried forward on a far broader basis than if the commission were to attempt the task alone. The members of the commission would have to be very highly qualified in the area of private international law, for they would have to co-ordinate and review the work of specialists. Every effort must be made, therefore, to secure the highest level of talent for the commission. One approach had been suggested in paragraph 226 of the Secretary-General's report. Another possible approach could be found in Economic and Social Council resolution 1187 (XLI) concerning the Committee for Programme and Co-ordination. A combination of those two approaches might be in order.

48. The draft resolution in document A/C.6/L.613 was well designed to serve as the basic statute for the commission. The broad wording of the grant of authority to the commission was desirable, inasmuch as considerable experimentation would be necessary to work out the most efficient and expeditious ways of harmonizing and unifying international trade law. Reliance upon existing experience and institutions would be of great advantage to the commission in establishing its work patterns. The existing institutions would also have to make such changes in their own work patterns as might be necessary to render the greatest assistance to the commission. In particular, they would be expected to make their facilities and knowledge available to those countries which did not yet have much experience in that field.

49. The draft resolution sought to promote the unification and development of private international law, and it was in that context that the reference in its eleventh preambular paragraph to General Principle Six of UNCTAD was to be viewed. The objectives set forth in General Principle Six included both public and private international law matters.

50. The draft resolution set forth sound criteria for determining the size of the proposed commission. There was one additional consideration: the number of members should not be so large as to prejudice the effective functioning of the commission. In his delegation's view, the size of the International Law Commission was the desirable maximum.

The meeting rose at 6 p.m.

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