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**SIXTH COMMITTEE, 1248th
MEETING**

Wednesday, 29 September 1971,
at 10.55 a.m.

NEW YORK

Chairman: Mr. Zenon ROSSIDES (Cyprus).

AGENDA ITEM 87

**Report of the United Nations Commission on International
Trade Law on the work of its fourth session (continued)
(A/8417, A/C.6/L.820)**

1. Mr. BEESLEY (Canada) expressed appreciation to the Chairman of the United Nations Commission on International Trade Law for his excellent statement introducing its report (A/L.8417) and for his commentary on the progress which the Commission had made since the last General Assembly. It was studying many complex and serious issues and had come to play a significant role in international legal affairs. His delegation hoped that the Commission would continue to maintain the thoughtful and studious approach to each of the topics chosen for study that it had demonstrated in the past.

2. Although not a member of the Commission, the Canadian Government followed its work with considerable interest. It had made remarkable progress since its creation, and his Government was optimistic that its contributions to international law would have a major and long-lasting effect.

3. He welcomed the considerable progress that the Commission had made in its study of the need for modifications to the Uniform Law on the International Sale of Goods (ULIS) annexed to the 1964 Hague Convention. In particular, he supported the decision adopted by the Commission (*ibid.*, para. 92) that the Working Group on the International Sale of Goods should continue its work on the preparation of a uniform law or the drafting of a revised text of the ULIS. His Government was carefully studying the ECE general conditions of sale and standard contracts. While it was not at present in a position to endorse promotion of the wider use of the ECE general conditions or to comment on the development of general conditions embracing a wider scope of commodities, his Government would follow developments in that area at the fifth session of the United Nations Commission on International Trade Law with considerable interest.

4. Progress had also been made in the area of international payments. His Government felt that the Commission should continue to direct its efforts towards the formulation of uniform rules for a negotiable instrument to be used optionally in international transactions. It was to be hoped that funds would be found to enable the Commission to prepare draft rules and commentaries on negotiable instruments.

5. His Government was pleased to note the co-operation between the Commission and the ICC in the work of revising the "Uniform Customs (1962)", and it hoped to be able, in due course, to provide comments on the programme of revision.

6. Canada, as a substantial shipping nation, had a particular and abiding interest in the topic of international legislation on shipping, and it accordingly took great interest in the Commission's work in that area. His delegation supported the Commission's decision (*ibid.*, para. 19) to concentrate on bills of lading and to promote the establishment of a balanced allocation of risks between the cargo owner and the carrier. It also endorsed the decision (*ibid.*) to establish an enlarged Working Group on International Legislation on Shipping, but urged that the Working Group as well as the Commission should make every effort to co-operate with other international organizations actively studying international shipping laws, in particular with UNCTAD. It was to be hoped that the Working Group would view its task not so much as an exercise in law reform but rather as an opportunity to provide guidance in the further development of international shipping law.

7. With regard to possible subjects for future study by the Commission, he suggested that the Commission should, in due course, consider studying the relationship between the activities of multinational corporations and international trade generally. The conduct of multinational corporations had a profound impact on international economic affairs; and, in his view, it would be appropriate for the Commission to study means of effecting a rational and systematic approach to the activities of corporations which transcended national boundaries and domestic law. In offering that suggestion, he was fully aware of the heavy workload of the Commission and recognized that other bodies might also be competent to carry out such a study. Indeed, the ILO had recently established machinery to deal with one aspect of the topic. Nevertheless, he felt sure that the Commission was an appropriate forum for the discussion of that subject and could make a useful contribution. He hoped that other delegations would give him their reactions to the new item he was suggesting.

8. His Government was encouraged by the results of the Commission's work in the various fields it has chosen to study. Through its careful research and analysis it had made and was continuing to make significant contributions to the development and harmonization of international trade law.

9. Mr. IBRAHIM (Sudan) expressed his delegation's gratitude to the Chairman of the Commission for his most informative and helpful introduction of its report. His

delegation had studied it with great interest and wished to congratulate the Commission on its effective working methods and the high quality of its work. In connexion with the information presented, he wished to make a few general comments on each of the priority items in the Commission's programme of work.

10. With respect to international legislation on shipping, his delegation was pleased to note that unanimous agreement had been reached on a concrete work programme, including specific topics relating to bills of lading. The Commission was to be commended for developing a harmonious working relationship with UNCTAD and establishing a clear-cut division of responsibilities in that area. It was clear that revision of the technical legal rules concerning international shipping must go hand in hand with the reappraisal of economic rules and practices, and it was precisely in that latter area that co-operation with UNCTAD should prove most fruitful. His Government looked forward to creative work on the part of the Commission aimed at redressing the many inequities to be found in the existing international shipping legislation, to the detriment of most developing nations. In particular, an equitable reallocation of risks between carriers and shippers could be achieved only by a complete revision of the existing Hague Rules and other relevant instruments. At the same time, however, steps would have to be taken to ensure that the reallocation of risks would not impose a burden of higher freight rates on shippers.

11. With regard to the question of international payments, his delegation noted with great satisfaction that the Commission had adopted an imaginative and novel approach towards the unification of the law relating to negotiable instruments. The Commission had wisely decided to refrain from attempts to change the domestic law of each country in that area and to direct its efforts to the formulation of special uniform rules to govern international negotiable instruments. It was particularly to be congratulated for taking steps to ensure that any uniform rules it might develop would be based not purely on legal theory, but on existing commercial practices and on the realistic requirements of international trade.

12. With regard to the international sale of goods, his delegation commended the progress made in the work of revision of the Uniform Law on International Sale of Goods and congratulated the Commission on its delegation of authority in that matter to the Working Group on the International Sale of Goods. His delegation was particularly pleased that the Working Group on Time-limits and Limitations (Prescription) had succeeded in preparing a preliminary draft of a Uniform Law on Prescription (Limitation) in the International Sale of Goods.¹ His delegation attached great importance to the codification of law in that area and hoped that, in a year or two, it would be possible to submit a final draft convention to the Sixth Committee. In that connexion, his delegation noted with great satisfaction the spirit of accommodation and compromise that had prevailed during the elaboration of the preliminary draft and hoped that the same spirit would prevail in future sessions of the Commission.

13. He congratulated the Secretariat on the publication of the first volumes of the *Yearbook of the United Nations Commission on International Trade Law, 1968-70* and the *Register of Texts of Conventions and other Instruments concerning International Trade Law* and said that his delegation looked forward to the publication of future volumes.

14. Mr. THOMPSON (Guyana) endorsed the Commission's decision to establish working groups on specific problems but thought that clear guidelines should be laid down for their composition and methods of work in order to ensure the representative character of any régime designed for the conduct of international trade. Furthermore, in cases where the subject-matter might involve serious economic and legal conflict or differing regional practices, the working group should be sufficiently large to reflect the broadest possible range of interest. In addition, members of the Commission not represented on a particular working group, as well as interested intergovernmental and non-governmental organizations, should be allowed to send observers. Finally, the terms of reference of every working group should provide for referral to the Commission of questions of principle. In that connexion Guyana approved of the arrangements made for the enlargement of the Working Group on International Shipping Legislation and was grateful for the opportunity it had been given to be represented by an observer at the recent session of the Working Group on Time-limits and Limitations (Prescription).

15. With regard to international payments, he endorsed the view that the divergency of national rules pertaining to negotiable instruments justified the establishment of a working group to elaborate uniform rules applicable to a special negotiable instrument for use in international commercial transactions. In drawing up such rules, the group should bear in mind the growing trend towards computerization of commercial activity. However, in view of the lack of technological progress in the developing world, the rules should be sufficiently flexible to avoid prejudicing the interests of developing countries while taking full account of the demands of modern commercial and technological advances. On the question of documentary credits and the progressive development of applicable rules, Guyana regretted the failure of the ICC to ensure the broadest possible participation in its activities and hoped that steps would be taken in the near future to remedy that situation.

16. In connexion with the international sale of goods, Guyana welcomed the efforts made by the Working Group on Sales to reduce the complexity of the uniform rules but had reservations about the phenomenal enlargement of their sphere of application. His Government agreed with the retention of the basic test that parties to a contract must have their places of business in different States, but considered that another basic test should be introduced relating to the movement of goods internationally. For a contract to come within ULIS, an international movement of its subject-matter must be within the contemplation of the parties. The absence of such a requirement could lead to a variety of abuses and undesirable practices which ULIS should not encourage or facilitate.

¹ See A/CN.9/50 and Corr.1, annex I.

17. The Working Group on Sales had prepared and recommended a revised version of article 2 of ULIS,² which had been criticized as being too subjective. Guyana took the view that revised article 2 identified two tests—one subjective and the other objective, both of which were applicable in determining the place of business of the parties to a contract. In order to remove any misunderstanding, the two tests should be clearly separated in the formulation of article 2 (a), as follows:

“For the purpose of the present Law:

“(a) the parties shall be considered not to have their places of business in different States if, at the time of the conclusion of the contract one of the parties

“(i) neither knew that the place of business of the other party was in a different State,

“(ii) nor had reason to know that the place of business of the other party was in a different State;”.

18. He also wished to draw attention to a basic inconsistency in the thinking of the Working Group on Sales, which had recommended the deletion of article 13 of ULIS³ on the ground that the criterion for establishing the objective test, namely that of being “a reasonable person”, was indefinable and therefore difficult to apply in an international sales transaction. Yet a similar objective test had been included in new article 2 (a) recommended by the Working Group, and consistency therefore demanded either the retention of article 13 or the abandonment of the objective test in new article 2 (a).

19. While on the subject of the sphere of application of the revised ULIS, he wished to point out that the provisions of article 3 of the draft convention prepared by the Working Group on Time-limits and Limitations (Prescrip-

tion)⁴ were not consistent with the relevant provisions of the draft of the revision of ULIS prepared by the Working Group on Sales. The definition of an international contract in article 3 contained no qualification in the sense of article 2 (a) of the draft on sales and consequently evidenced a major departure from the approach adopted by the Working Group on Sales. In a hypothetical situation, a contract that met the requirements of an international contract for the purposes of the draft of the revision of ULIS might not be so considered for the purposes of applying prescriptive rules, although the obverse was not necessarily the case.

20. His delegation could not support the French proposal (A/8417, paras. 146-147) to establish a union for *jus commune* which, though it might promote certainty and stability in the short term, was likely in the long term to have the effect of stultifying whatever progress might have been made towards the progressive harmonization and unification of the law relating to international trade. Article II of its preliminary draft,⁵ for example, attempted to entrench cold war international politics into the relevant law, with probable adverse consequences for the expansion of international trade. Further, the provisions of articles X and XI could not reasonably be construed as calculated to further the process of unification and harmonization, nor to increase certainty in the applicable law. In his view, certainty was more likely to be a function of uniform interpretation of relevant norms than of uniformity in the norms themselves. That fact emphasized the need to establish machinery for authoritative and binding interpretation of applicable norms in the sense of article 177 of the Treaty establishing the European Economic Community.⁶ For those reasons, Guyana did not recommend that the French proposal should be accorded a place of high priority.

The meeting rose at 11.40 a.m.

² See A/CN.9/52 and Corr.1, para. 13.

³ *Ibid.*, paras. 101-110.

⁴ See A/CN.9/70, annex I.

⁵ A/CN.9/60.

⁶ United Nations, *Treaty Series*, vol. 298 (1958), No. 4300.