



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. TAMMES (Netherlands) said that the Netherlands, as a shipping nation, was particularly interested in the work being done on international legislation on shipping, and expressed his confidence that the enlarged Working Group, in which the various interests of large and small, sea-faring and land-locked nations were represented, would be successful in drafting uniform rules on bills of lading. The Working Group should bear in mind both the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading done at Brussels in 1924 and the way in which international practice had developed since 1924 and preserve a balanced allocation of risks between the cargo-owner and the carrier.

2. His delegation appreciated the close co-operation between the Secretariat and international banking organizations and commercial institutions in connexion with the work on international payments and negotiable instruments. He fully supported the approach described in paragraph 27 of the Commission's report (A/8417) and noted that it was consistent with the principles embodied in a draft convention on combined transport which was to be finalized at a diplomatic conference in 1972. He urged the Secretariat and the Commission to co-operate closely with the Council of Europe in the task of finding common ground for the formulation of international rules on security interests in goods.

3. He recommended that States should ratify ULIS with reservations if necessary, and at the same time assist the Commission in preparing for a conference for the revision of ULIS and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, done at The Hague in 1964. That would be preferable to drafting a completely new text. The Commission's agreement in principle with the recommendation of the Working Group that sales to consumers should be excluded, set forth in paragraph 66 of the report, reflected the implicit purpose of the authors of the 1964 Hague Conventions, and he agreed that the concept ought to be stated explicitly. His delegation supported the new definition of the sphere of application of ULIS given in paragraph 68 of the report; subparagraphs (a) and (b) of paragraph 1 of the proposed article 1 of ULIS were in accordance with

the decision of the Netherlands Government to ratify both the 1964 Hague Conventions with similar stipulations.

4. With regard to the study requested from the Secretary-General in paragraph (b) of the report, he doubted whether it would be feasible to develop general conditions lying mid-way between the very general conditions in the 1964 Uniform Laws and the more specific general conditions applied by the Economic Commission for Europe, and he regretted that the wording of the paragraph did not reflect the idea that such "general" general conditions should be based on the principles of the 1964 Uniform Laws.

5. With regard to the work of the Working Group on Time-Limits and Limitations (Prescription), he would prefer a short limitation period only for some well-defined types of transactions, as an exception to a longer general limitation period; he agreed with the statement of the representative of Ghana (1251st meeting) that the sphere of application of the Convention on prescription should follow exactly the terms of ULIS, but suggested that the Secretariat should collect and analyse the comments of all Governments on the final draft Uniform Law on Prescription (Limitation) before the fifth session of the Commission.

6. Turning to the French proposal for the establishment of a union for *jus commune* (A/8417, paras. 146-147) he said that although the proposal might accelerate the acceptance by States of uniform rules, he none the less believed that promoting ratification of conventions offered better prospects for improving international co-ordination, particularly since it was doubtful whether the proposed system was in conformity with various national constitutions.

7. His delegation appreciated the publication of the *Yearbook* of the Commission and the *Register of Texts* and looked forward to future volumes.

8. Mr. KRISHNADASAN (Zambia) said that, with regard to the Commission's working methods, his delegation approved of joint working groups where two or more organizations were dealing with the same subject matter, close co-operation with interested organizations and the suggestion that when final draft conventions were prepared on any aspects of international trade law, they should be circulated to all Member States of the United Nations, other States and interested organizations for comments, in keeping with the principle of universality.

9. He welcomed the substantial co-operation between the Commission and UNCTAD in the sphere of international legislation on shipping, which had prevented overlapping and duplication. He also welcomed the establishment of the

new and enlarged Working Group of 21 members, although he wondered whether there would have been any significant difference in the level of efficiency if the Commission had constituted its Working Group as a committee of the whole, the difference being a mere eight members. He was particularly pleased that, within the priority topic of international legislation on shipping, the first subject for consideration was to be bills of lading. He expected that that subject would be examined from the standpoint of the needs of economic development—particularly the development of the developing countries—and hoped that the Commission would protect the interests of land-locked countries. Current legislation, including the 1924 Brussels Convention and the 1968 Protocol to amend it, favoured carriers at the expense of cargo-owners, and he therefore welcomed the Commission's decision (*ibid.*, para. 19) concerning examination of that legislation, as it offered an opportunity to introduce more equitable conditions for developing nations, which were predominantly ship-users and cargo-owners. Revision of the existing legislation would be a first and significant step in eliminating, *inter alia*, uncertainty in the application of laws, exonerative clauses of doubtful validity, the exemption of the carrier from liability in respect of negligence of its agents, uncertainties caused by certain terms such as "reasonable deviations", "due diligence", and insufficient legal protection for deck cargo. The revision should also lead to an increase in the risks borne by carriers and a reduction in those borne by cargo-owners.

10. He appreciated the value of the *Yearbook* of the Commission and the *Register of Texts*, which would provide readily accessible texts to Governments, universities and interested commercial organizations, particularly in developing countries, and looked forward to the publication of future volumes.

11. Concerning training and assistance in the field of international trade law, the IMCO proposal<sup>1</sup> relating to laws and regulations applicable to shipping could usefully be extended to other subjects within the scope of international trade law. He trusted that the consultations referred to in paragraph 145 of the report, which the Secretary-General was requested to continue with other interested organizations to make practical experience in international trade law available through the co-operation of trading institutions and similar bodies would be successful; training should be provided under United Nations auspices.

12. He acknowledged the validity of the French proposal for the establishment of a union for *jus commune*, and believed that it merited detailed consideration by all Governments. The Canadian suggestion (1248th meeting) that the Commission should in due course consider multinational corporations deserved serious study, though his delegation had no fixed views on which body should undertake the study.

13. Mr. GANA (Tunisia) welcomed the positive results which the Commission had achieved on its priority topics. He approved of the emphasis laid on the question of bills of lading, and was glad that the topic was to be dealt with by a

new Working Group on International Legislation on Shipping. He agreed that a balanced allocation of risks between the cargo-owner and the carrier should be achieved, with appropriate provisions concerning the burden of proof.

14. On the subject of international payments, he said that the questionnaires which had been sent to Governments should help in the drafting of new uniform rules on a special negotiable instrument for optional use in internal transactions, which would solve the problems arising from the application of two different systems, the system based on the United Kingdom Bills of Exchange Act, 1882, and the United States Uniform Commercial Code, and the European system based on the Geneva Conventions of 1930 and 1931, providing uniform laws for bills of exchange and promissory notes, and cheques, respectively. His delegation also approved of the Commission's decisions to continue its work on bankers' commercial credits (A/8417, para. 43), bank guarantees (*ibid.*, para. 49) and security interests in goods (*ibid.*, para. 53).

15. He noted with satisfaction the Commission's working methods for dealing with ULIS. His delegation considered that if the sphere of applicability of ULIS were too broad, it might enable the parties to a contract to avoid the effect of their national laws.

16. He considered that the *Yearbook* of the Commission and the *Register of Texts* would be very useful for Governments and institutions concerned with international trade law, and approved of the Commission's decisions to request the Secretary-General to publish second volumes of both (*ibid.*, paras. 125 and 131).

17. He stressed the importance of the French proposal for the establishment of a union for *jus commune*; the States had not yet given their views on the proposal, but he hoped that it would be favourably received.

18. Despite the Commission's achievements, there was still a gap between developing and developed countries with regard to training and specialization, which was the main obstacle to the development of international trade law. He therefore favoured the idea of a training and assistance programme in the field of international trade law financed by UNDP, which would include seminars and courses for young people from developing countries in trading and bank establishments and insurance societies in developed countries, and courses in developing countries under the management of experts from developed countries.

19. Mr. KOMBOT-NAGUEMON (Central African Republic) said that, while appreciating the efforts made by the Commission, he regretted the absence from the new and enlarged Working Group on International Legislation on Shipping of any representative of a land-locked country such as his own. He did not wish to propose the creation of large and unwieldy working groups, but in view of the fact that the Second United Nations Development Decade was just beginning and that it must avoid any form of distortion, imbalance or discrimination, he considered that all working groups set up within the United Nations must take into account not only the criterion of geographical distribution but also the representation of the different economic interests involved. He therefore hoped that the

<sup>1</sup> For a summary of the proposal, see A/CN.9/58/Add.1.

present situation would be remedied by extending the number of intergovernmental and non-governmental organizations invited to take part in meetings of the Working Group.

20. His delegation strongly urged that the Commission's conclusions regarding publication of the *Yearbook* of the Commission, the *Register of Texts* and the bibliography on international trade law be put into effect without delay in all Member States, particularly the developing countries, together with the decisions concerning training and assistance in the field of international trade law in the developing countries.

21. Mrs. SLAMOVA (Czechoslovakia) pointed out that the Commission had made progress in its work on time-limits and limitations (prescription) in the international sale of goods but was still at the initial stages in the other subjects under consideration. The working method followed by the Commission had consisted in selecting a number of important topics requiring unification and picking out general rules to be applied by the participants in international trade. Her delegation believed that a full unification of international trade law would not result from that approach which, by concentrating on isolated topics, might lead to a further fragmentation of international law. That danger could be avoided by introducing a definite system into the process of unification with a view to achieving general principles applicable to all international transactions. The aim should be gradually to prepare a unified law of international trade, concentrating during the initial stages on general questions of compulsory law, such as contracts and their terms. Unless that were done, there was a risk of producing a series of unified rules whose contents and scope were unconnected, thereby creating loopholes and conflicts.

22. International legislation on shipping required both the unification of existing rules and modernization of their content, with a view to establishing a more equitable allocation of risks. She agreed with the Commission's decision (*ibid.*, para. 19) to give priority in the first instance to bills of lading.

23. It was highly important to limit the concept of the international sale of goods, and in that connexion, the conclusions reached by a considerable number of members at the fourth session of the Commission fully corresponded with the views of the Czechoslovak delegation. A definition of the international sale of goods based on ULIS would give rise to considerable practical difficulties. The Czechoslovak delegation therefore considered that exemption from the law as provided in draft article 5 recommended by the Working Group in its report<sup>2</sup> should be granted only to articles of personal consumption and under no circumstances to articles of industrial consumption such as raw materials for processing. Her delegation also approved the position set forth in paragraphs 67 to 69 of the Commission's report concerning the draft of article 1.

24. On the subject of general conditions of sale, it would be useful to prepare so-called "general" general conditions, for which the General Conditions of Delivery of Goods

between Organizations of the Member Countries of the Council for Mutual Economic Assistance could serve as a model.

25. A preliminary draft of a Uniform Law on Prescription (Limitation) in the International Sale of Goods<sup>3</sup> had already been drawn up and the Czechoslovak delegation endorsed the principles on which it was based. In that connexion, it would be useful to make a clearer distinction between the limitation period of the Uniform Law and other periods containing some element of limitation. In the view of the Czechoslovak delegation, the length of the limitation period should be three years. She hoped, however, that a compromise solution could be found that would hasten the completion of the Uniform Law. Attention should also be given to the possibility of extending the Convention to cover not only time-limits for the international sale of goods but for all laws connected with international trade.

26. Mr. ABAS (Malaysia), after noting the progress achieved by the Commission and its successful collaboration with other organizations, welcomed the publication of the *Yearbook* of the Commission and the *Register of Texts*. He was also pleased to note the decision of the Commission (*ibid.*, para. 45) concerning the programme of training and assistance in the field of international trade law, which would be of great help to the developing countries.

27. To be effective, international trade law must be acceptable not only to Governments but to international traders. Consequently, all laws drafted by the Commission must offer mutual advantages to the Governments of both exporting and importing countries and to their traders. Current legislation tended to place traders in the developing countries at a disadvantage, while they were further handicapped by lack of organization, skilled advisers and other services. In addition, they were subject to regulations with which they were not familiar and sometimes had to deal with unscrupulous trading partners. It was therefore clear that steps must be taken to protect them. In its task of safeguarding the mutual economic interests of traders in both developing and developed countries, the Commission and its working groups must not merely display technical skill in the drafting of texts, but should give special consideration to the underlying principles of trade law. Only thus could international trade be conducted with justice and equity and the principles of the United Nations Charter put into effect. In the light of those remarks he proposed that the Sixth Committee adopt the recommendations made by the Commission at its fourth session.

28. Mr. SINGH (Chairman of the United Nations Commission on International Trade Law) thanked the members of the Sixth Committee for their constructive approach to the work of the Commission and their encouraging remarks. He was particularly pleased with the favourable reaction of the Committee to the publication of the first volumes of the *Yearbook* of the Commission and the *Register of Texts* and the support expressed for the publication of future volumes.

29. He assured members that all their remarks would be given most serious consideration at the fifth session of the

<sup>2</sup> A/CN.9/52 and Corr.1, para. 51.

<sup>3</sup> A/CN.9/50 and Corr.1, annex I.

Commission. While he could not speak on behalf of the Commission without having consulted it officially, he wished to comment briefly on some of the issues that had been raised in the Committee. He had listened with great attention to the Canadian suggestion to the effect that the Commission should consider the question of multinational corporations. He wished, however, to point out that a body engaged mainly in codification, as the Commission was, could not deal effectively with more than four subjects at a time. The Commission was in fact already dealing with four subjects simultaneously and he felt that it would be extremely difficult for it to add to its agenda an item so broad as the one suggested by Canada. He wondered whether the Canadian delegation might not be satisfied if its suggestion was highlighted in the report of the Sixth Committee to the General Assembly, as a topic for further study at an appropriate time. It would be most useful if the Canadian delegation would submit a detailed proposal in writing, describing the scope of its proposal and the aspects of the topic which it felt should be taken up.

30. Several delegations had expressed the view that the French proposal for the establishment of a union for *jus commune* should be circulated to all States Members of the United Nations and not only to members of the Commission. The question had already given rise to heated discussions within the Commission and the French delegation had agreed that its proposal should be circulated, in the first instance, to members of the Commission only.

31. Turning to the definition of the international sale of goods, he noted that some members had expressed the view that international movement of the goods should be added as an additional requirement. That matter had also been highly controversial and the Commission had spent many hours in discussing it. As the representative of the United Kingdom had pointed out (1253rd meeting), such details were perhaps best left in the hands of expert drafting groups.

32. The importance of the active participation of international organizations with expertise in the Commission's field of concern had been stressed. He assured members that in their capacity as observers, several international organizations had participated actively in the debates of the Commission and its working groups and had submitted proposals, studies and other comments. Consultations had also been conducted at the inter-secretariat level. With regard to the difficulties encountered in the 1962 version of the Uniform Customs and Practice for Documentary Credits, he was happy to announce that the ICC had recently indicated its readiness to invite representatives of the Commission or its secretariat to participate in the deliberations of ICC's committees dealing with questions of

interest to the Commission. That proposal would be submitted to the fifth session of the Commission.

33. The representative of the Central African Republic had expressed regret at the absence from the Working Group on International Legislation on Shipping of any representative of a land-locked country. He wished to point out that Hungary, a land-locked country, was a member of that Working Group.

34. Several members had commented on the size of the Commission's working groups; while some felt they were too small, others felt they were too large. He wished to point out that the size of a working group depended on the particular circumstances of each case and the nature of the subject. He felt that it should be left to the Commission to decide on the size of the working group in each particular case, taking into account the circumstances involved. Doubts had also been expressed regarding the justification for intersessional meetings of the working groups. Experience had shown that the work of drafting and of analysing various comments and proposals made by Governments, international organizations and trade and banking institutions could be done much faster in a small group. To work effectively, the groups had to meet in advance of the session so that their concrete recommendations could be considered by the Commission. The Commission's experience with the revision of ULIS and the preparation of a preliminary draft convention on prescription had clearly demonstrated the value of the intersessional working groups.

35. He wished to emphasize the vital role played by non-governmental institutions in providing source material for the preparation of questionnaires sent by the Secretariat to Member States for comments. He also stressed that unless comments from Governments were received in time, the Commission could not function properly.

36. Mr. BEESLEY (Canada) thanked the Chairman of the Commission for his remarks regarding the Canadian suggestion. A number of delegations had privately expressed their interest in the question his delegation had raised, but had said they would need time to study the matter more thoroughly. His delegation realized that it would be premature to refer the matter to the Commission formally as an additional agenda item, and was quite willing to accept the suggestion made by its Chairman. His delegation hoped that members of the Committee would be able to make their views known at the twenty-seventh session of the General Assembly. In the meantime, it would prepare a draft along the lines suggested by the Chairman of the Commission with particular reference to the scope of the question and the legal aspects to be considered.

*The meeting rose at 4.50 p.m.*