

IV. FUTURE WORK

The establishment of a Union for *jus commune*; proposal by the French delegation (A/CN.9/60) *

The French delegation had submitted to UNCITRAL at its second session a proposal relating to an outline convention concerning a "common" law for international trade. It was then invited by the Commission to submit a more detailed preliminary draft couched in the form of articles so that other delegations could see more clearly what its proposal would entail in practice.

STATEMENT OF REASONS

The law of international trade is at present in a deplorable state. Transactions which by their very nature demand international regulation are governed by national law. In very many cases it is quite impossible to know which national law is applicable. And even when it has been decided that a particular national law should apply, it is often hard to find out what that law says. Discouraged by the present anarchy and uncertainty, trade seeks a solution in resort to arbitration; but under present conditions this is hardly more than a procedure for settling disputes, and in the end it is not clear what rules of law will be applied.

There is no reason why such a situation should exist. Due as it is to the unsatisfactory organization of the international community, it bears no relation to the interests of States. In most cases it is of no great moment to a State whether one or another rule governing conflicts of laws is applied, for there is absolutely no certainty that the rule selected will in the end be favourable to its nationals.

The purpose of the French delegation's proposal is to clarify the issue by promoting the development of a new *jus commune*. To States which join the proposed Union, this *jus commune* will show what provisions are to be applied to the international transactions governed by it, and it will usually, therefore, become unnecessary to refer to the various national systems of law in order to discover what provisions govern these matters.

The provisions of *jus commune* can, of course, be either rules governing a conflict of laws or substantive rules, depending on the matter to which they relate.

There are two main principles underlying the French delegation's proposal. The first is that the rules applicable to transactions in international trade should be established, so far as possible, by agreement among States. The second is that in every case States must be

permitted to decline to apply the rules thus agreed upon wherever they consider that they jeopardize their interests or wherever for any other reason—which they cannot be called upon to state—they consider that they should not accept them.

Once these principles are accepted, many ways of applying them can be thought of. The French delegation is proposing a very simple system. It is prepared to consider any proposal to amend or supplement that system, in particular as regards the structure and powers of the suggested Union, its relations with UNCITRAL, the procedure for establishing *jus commune* and the procedure for making derogations from it.

This proposal is in no way prejudicial to the international organizations at present engaged in unifying law (rules governing conflicts of laws or substantive rules). Quite the reverse; it offers those organizations fresh prospects for an expansion of their work and its more successful conclusion. The Union to be established under the French proposal will undoubtedly use the existing institutions for the preparation of the legal instruments which it will afterwards declare to be *jus commune*.

Again, the French proposal imposes no obligation upon States. It merely requires them to face their responsibilities when a text is adopted as a rule of *jus commune*; if they do not approve of that text, they must—once they have agreed to join the Union—say so.

The French delegation is asking the United Nations Commission on International Trade Law to consider and complete the drafting of this proposal. In point of fact, the proposal falls within the far more general terms of reference given to UNCITRAL, which, under resolution 2205 (XXI) is to "further the progressive harmonization and unification of the law of international trade".

Preliminary Draft of an International convention establishing a union for *jus commune* in matters of international trade

[States],

Considering the multiplicity and diversity of national law and the resultant obstacles to any attempt to lay a reliable foundation for international trade transactions;

Convinced that the conditions prevailing in the modern world call for a fundamental review of the methods now being applied to improve the international trade system;

* 13 March 1971.

Believing in the need to establish a truly international legal order governing international relations;

Persuaded, however, that all progress should be achieved in full respect for national sovereignty;

Paying a tribute to the many efforts made in various quarters, including particularly the United Nations, to improve the legal system governing international trade;

Basing itself on the example already provided in certain special sectors by various international organizations,

Have agreed to revive the idea of *jus commune*,

And, for this purpose, have adopted the following provisions:

Article I

There shall be established among the States acceding to this Convention a Union for *Jus Commune* (UJC).

The purpose of the Union shall be to establish, in full respect for the sovereignty of States, a new *jus commune* in matters of international trade.

Article II

Accession to the Union shall be open to all States Members of the United Nations or of the specialized agencies of the United Nations.

Article III

This Convention shall enter into force when . . . States have expressed their intention of acceding to the Union by a declaration addressed to the Secretary-General of the United Nations.

Article IV

All States may at any time withdraw from the Union by addressing a declaration to the Secretary-General of the Union.

Such declaration shall take effect one year after it has been made.

Article V

The governing body of the Union shall be the General Conference.

Every State shall have one vote in this Conference.

Article VI

The General Conference shall draw up its rules of procedure.

It shall elect the Secretary-General and the deputy secretaries-general of the Union.

It shall prepare the Union's programme of work and take all the necessary steps for carrying it out.

It shall approve texts designed to constitute, for the Union's members, the *jus commune* of international trade.

Article VII

A three-quarters majority shall be required at the General Conference to give a text the status of *jus commune*.

Article VIII

A decision thus adopted by the General Conference shall generally take effect three years after it has been passed.

The General Conference may by a simple majority prolong or extend this time-limit.

It may also, by a two-thirds majority, reduce it.

Article IX

On the expiry of the time-limit laid down in the preceding article, and subject to the provisions of article X, texts approved by the General Conference shall become valid law in the various States of the Union in the matters governed by them.

Article X

Any State may, however, declare at any time that it will not apply in its territory any particular rule declared *jus commune* by the General Conference.

Such declaration, addressed to the Secretary-General of the Union, shall take effect immediately if, under articles VIII and IX, the rule has not yet entered into force with regard to that State, and otherwise one year after such declaration has been made.

A State excluding the application of a provision of *jus commune* in its territory shall at the same time indicate, wherever possible, by what rule in its law that provision is replaced.

Article XI

The Secretary-General of the Union shall communicate to the various States without delay any declarations he may receive in conformity with articles IV and X.

He shall annually prepare an edition of the texts adopted by the General Conference, pointing out, in respect of each text, the States which have excluded it from application and, wherever possible, the rules which in these States are substituted for the provisions of *jus commune* which have been set aside.