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MEETING**

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at 10.50 a.m.

NEW YORK

Chairman: Mr. Paul Bamela ENGO (Cameroon).

AGENDA ITEM 86

**Report of the United Nations Commission on International
Trade Law on the work of its third session (continued)
(A/8017, A/C.6/L.794)**

1. Mr. PERSSON (Sweden) paid a tribute to the high standard of the work undertaken by the United Nations Commission on International Trade Law, and welcomed the working methods it had adopted.

2. His delegation noted with satisfaction that, according to the report of the Commission (A/8017), it had decided to use, as the basis for its consideration of uniform rules governing the international sale of goods, the Uniform Law on the International Sale of Goods (ULIS) annexed to the Hague Convention of 1964 relating to it. On the subject of time-limits and limitations, the Swedish Government would submit its comments in due course.

3. As for negotiable instruments, his delegation agreed with the Commission's decision to concentrate on the possibility of creating a new negotiable instrument, leaving untouched the Geneva Conventions on the unification of the law relating to bills of exchange (1930) and to cheques (1931).

4. The Commission's report indicated that the Working Group on International Shipping Legislation would submit a report on its activities to the fourth session. In that connexion, the Swedish delegation assumed that the principle legal problems would be entrusted to the Commission, and hoped that satisfactory co-operation and co-ordination would be established with the United Nations Conference on Trade and Development (UNCTAD), in order to avoid unnecessary duplication of work. Close contact with the Inter-Governmental Maritime Consultative Organization (IMCO) and the International Maritime Committee (IMC) would also be of great value.

5. Generally speaking, the Swedish delegation hoped that the Commission would in the future, as in the past, both play the role of a co-ordinating body and engage in specific studies, whichever seemed consistent with the objectives in view. The latter approach was, in the Swedish delegation's opinion, best suited to activities connected with the international sale of goods and negotiable instruments, in view of the relatively limited number of countries which had been represented at the Hague and Geneva Conferences and the need to ensure the participation of experts from all over the world.

6. Mrs. BOIVINEAU (France) observed that in accordance with General Assembly resolution 2205 (XXI) the Commission was responsible for furthering the progressive harmonization and unification of the law of international trade with a view to reducing or removing legal obstacles to the flow of international trade. It was not therefore one of the Commission's tasks to draft texts itself, but rather to act as a link between international organizations dealing with international trade law and to provide co-ordination and information. The French delegation therefore approved of the Commission's caution in not recommending the complete replacement of existing texts by new ones. With regard to the working methods so far employed, the French delegation was dubious about the practice of referring matters to working groups, and would prefer the Commission to seek the co-operation of all international organizations dealing with the subjects under consideration, and not merely some of them. It would then be for the Commission to examine, if necessary amend, and finally approve the texts drafted by those organizations, in the light of the needs of the international community and the developing countries in particular.

7. With regard to the international sale of goods, her delegation noted that, although a working group had been established in January 1970, no decision had yet been taken. On the other hand, she was pleased to note that a considerable number of countries were now favourably disposed towards the substance of ULIS, subject to a few drafting changes. It therefore seemed reasonable to expect that the activities of the working group would lead to a broad acceptance of the Hague Conventions of 1964. On the specific subject of time-limits and limitations—a matter not settled in ULIS—she awaited with confidence the results of the studies being undertaken by the Commission, and hoped that it would take into account what had already been achieved in that field by the competent international organizations.

8. The French delegation was glad that the Commission had decided not to draft a new convention on international commercial arbitration, thereby adhering to its true vocation of providing information.

9. On the subject of international legislation on shipping, she stressed that it was particularly important for the Commission to co-ordinate its activities with all the international organizations concerned, without exception. While UNCTAD's co-operation on that subject would certainly be welcome, it should be recognized that other international organizations, including IMCO, were active in the same field. The French delegation hoped that the Commission would take the necessary steps to associate IMCO with its own work and with that of UNCTAD.

10. Her delegation approved of the Commission's decision to request the Secretary-General to submit reports to its annual sessions on the current work of international organizations in matters included in its programme of work. In her view, that decision—like the proposed collaboration with the International Institute for the Unification of Private Law—would facilitate the Commission's task of co-ordination.

11. When the Commission had considered questions relating to its future work, France had proposed a basic convention establishing a common body of international trade law. Such a convention would meet a real need. The preparation and signature of international conventions were not enough to bring about the unification of law; conventions had also to be ratified. In view of the time taken by national administrations to consider texts drafted by the United Nations, the results—in terms of ratifications—were disappointing. France had therefore proposed the drafting of a basic convention, under which the regulations established in the various branches of international trade law—which would constitute the common body of international trade law—would under certain conditions automatically enter into force in States adhering to the convention. States concerned would be entitled to declare that they did not accept a given provision proposed by the Commission, and, in that case, they would have to specify which rule of their municipal law would replace the provision in question. In short, the present practice would be reversed, and the absence of comment by a State would be taken to mean that it accepted the text proposed by the United Nations. The French delegation was aware of the revolutionary nature of its proposal but hoped that the Commission, in considering the matter at its fourth session, would bear in mind that national sovereignty would be fully respected, since all States would be free not only to accede or not to accede to the basic convention. Even if they did accede to it, they would also be free to indicate whether they accepted or rejected a particular provision. To begin with, the basic convention would probably not be ratified by all States, and many reservations would be entered; but the important point was for the Commission to recognize that it had a duty to take international action to ensure that a text drafted by the United Nations was duly taken into consideration by States.

12. On the whole, the French delegation was satisfied with the work done by the Commission at its third session. It wished to repeat, however, that emphasis should be placed on its co-operation with international organizations already dealing with international trade law, and that steps should be taken to put an end to the regrettable situation resulting from delays in ratifying texts drafted on that subject by the United Nations.

13. Mr. CASTRÉN (Finland) noted that, although Governments, the Secretary-General and the various bodies concerned with international trade law had already provided the Commission with a great deal of documentation, it had not taken any decision on the main items entrusted to it, since the studies undertaken by the Rapporteurs and the Working Groups were still not completed. He was nevertheless glad that the Commission had taken various steps to speed up the pace of its work, and that its decisions had been arrived at by consensus.

14. Considerable progress had been made in the consideration of matters relating to the international sale of goods, international payments and international commercial arbitration. On the other hand, hardly any progress had been made with the question of international legislation on shipping, and the question of the proper division of work between the competent bodies of the Commission and UNCTAD was still unsolved.

15. The Finnish delegation noted with satisfaction that the first volume of the *Register of Texts* would be published in the course of 1970 and that, in accordance with the request formulated by the Commission at its second session,¹ the volume would set out the text of conventions and other relevant instruments, and summaries of draft conventions, in the fields of the international sale of goods and international payments, and would list the titles and sources of instruments in the fields of international commercial arbitration and international shipping legislation. His delegation thought that the first volume of the *Yearbook of the United Nations Commission on International Trade Law* to be published in 1970, which would contain material relating to the Commission's first three sessions, should be followed by other volumes in future years. It also approved of the proposals formulated by the Commission in paragraph 186 of its report concerning the practical measures to be adopted in order to facilitate work on the bibliography of international trade law. It was glad that the Commission's methods of work were sufficiently flexible to ensure meaningful collaboration with the competent international organizations in respect of the subjects included in its programme of work and to achieve any necessary co-ordination of work. It also agreed with the Commission's decision, in paragraph 200 of the report, concerning training and assistance in the field of international trade law.

16. His delegation had noted the proposal of the French delegation concerning the conclusion of a basic convention establishing a common body of international trade law; however, it could not at present express a definite view on that matter and it hoped that, in response to the request made by several members of the Commission, France would prepare a preliminary draft of such a convention which would give States a better idea of its purport.

17. He said that his delegation also agreed with the content of paragraphs 219 to 221 concerning the organization of the future work of the Commission.

18. Mr. HOUBEN (Netherlands) said that the important progress evidenced by the report of the Commission on its third session confirmed the hopes which had been placed in that new body. However, since its work was still only in the preliminary stages, most of the decisions taken at the last session still related to methods of work and the procedures to be used for considering various questions; however, in some of the fields dealt with, the decisions did contain a promise of the preparation of texts of uniform rules. In that connexion his delegation wished to stress that the subjects included in the Commission's programme of work were for the most part highly complex; that its terms of

¹ See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18*, chap. XII, resolution E.

reference forced it to take account of rules of law and commercial practices which were often very different from one another; and, above all, that the texts it was supposed to draft would have to lend themselves to accession by as large as possible a number of States with very different legal or social systems. It was therefore a long-term task; and, particularly in the report now before the Sixth Committee, there was evidence of progress towards objectives whose final realization was bound to be slow.

19. From a comparative study of the reports of the first three sessions of the Commission, it was clear that it had developed increasingly effective methods of work, particularly with regard to the international sale of goods and international payments. On the first of those questions, it had established small working groups to continue its work between sessions; for instance, the Working Group on Time-limits and Limitations (Prescription) had already prepared a preliminary draft uniform law and another working group had examined in detail several basic provisions of the two Hague Conventions of 1964. His delegation was particularly interested in the question of the international sale of goods. In his Government's view, the work in progress should not prevent States from ratifying those Conventions, since ratification would not exclude the possibility of revising the instruments later. In recommendation II annexed to the Final Act of the Diplomatic Conference on the Unification of Law Governing the International Sale of Goods held at the Hague in 1964, the representatives who had drafted the Conventions had expressed the view that a committee of Government experts should review the operation of ULIS and if necessary make proposals to amend or supplement the existing text, with a view to the convening of a revision conference.

20. Turning next to the question of time-limits and prescription in the field of the international sale of goods, he said that it would be preferable to draft an international convention on that subject distinct from the Hague Convention of 1964. If the rules on time-limits and prescription were combined with the rules on the international sale of goods in one single convention, States which objected to one or other set of provisions might not accede to the instrument.

21. His delegation fully shared the Commission's view that, for the study on negotiable instruments, it would be necessary to seek the views and obtain the active support of banking and trade institutions before taking a final decision regarding the desirability and the possible scope of the unification of rules of law on that subject. He was glad that the methods of work adopted had led to effective co-operation between the international organizations concerned and had enabled the Commission to collect a considerable amount of documentation on the problems involved in that field. The Commission had also obtained from Govern-

ments and banking and commercial circles some suggestions regarding the possible content of uniform rules applicable to a special negotiable instrument for optional use in international transactions.

22. Concerning international commercial arbitration, his delegation tended to agree with members of the Commission who thought that, instead of trying to draft new uniform rules on that subject—a task which was hardly likely to be successful in view of the differences between the rules of law on arbitration and the practices of different countries—it would be better for the Commission to do everything possible to ensure that the existing conventions, particularly the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and the European Convention on International Commercial Arbitration of 1961, were accepted by the largest possible number of countries.

23. His delegation took note of the Commission's decision with regard to international legislation on shipping. It expressed the hope that the Commission would take into consideration the work done by IMCO and IMC.

24. His delegation had noted with great interest the proposal, submitted by France, to the effect that the uniform rules of international trade law drafted by the Commission would automatically enter into force in countries acceding to a basic convention making the Commission responsible for establishing, in the various branches of international trade law, appropriate regulations applicable by all States, except in so far as a State had made known that it would not accept some of the provisions proposed. However, although that proposal—whose impeccable logic was certainly attractive—was likely to accelerate acceptance of uniform rules by States, its adoption would have such far-reaching consequences that a decision on the question seemed at present premature, especially as the system proposed was hardly compatible with constitutional rules providing that international agreements must be ratified by Parliament before acquiring legal force in national territories. Hence his delegation thought that it would be preferable, at least for the moment, to approve the conventions on uniform law separately.

25. He expressed his conviction that the first concrete results of the Commission's work would soon be apparent.

26. Mr. LILAR (Chairman of the United Nations Commission on International Trade Law) thanked the members of the Sixth Committee for the kind words they had addressed to him and to the members of the Commission. He wished to stress that the fruitful results of the work of its third session were due to the keenness, perseverance and legal expertise of its members.

The meeting rose at 11.45 a.m.