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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)

1. Mr. HERRAN MEDINA (Colombia) said that positive law, even with the contributions of customary law, was lagging behind the increasingly rapid development of international trade. The removal of the obstacles, including the legal obstacles, to international trade was of special importance to the developing countries whose economies depended largely on their foreign trade, but it would also be to the advantage of the developed countries, whose trade would expand proportionately.

2. Legal science owed international trade a secular debt that went back to the famous collections of commercial and maritime customs and jurisprudence—the Laws of Wisby, the Laws of Oleron, the Guidon de la mer and the Consolato del Mare—which had been compiled in the Middle Ages for the traders of the North Sea, the Baltic and the Mediterranean and whose authority, after the discovery of the New World, had spread to America. The very institution of the consular service had been conceived, to meet the needs of trade, in the same cities of northern Italy to which the world owed the first manifestations of private international law. The time had come for the United Nations General Assembly to pay that debt and, in so doing, to contribute effectively to the prosperity of all peoples and, thereby, to the maintenance of world peace and stability by undertaking the progressive unification and harmonization of international trade law. The report in document A/6396 and Corr.1 and 2 was the first stage in that task, which had been initiated by General Assembly resolution 2102 (XX). The report did honour to the Secretary-General and to all the experts, United Nations organs and other institutions that had contributed to it. According to the report, the objective was not to resolve conflicts of laws but to prevent them by establishing universally accepted rules. The very economic needs of States made the endeavour a viable one, for to the extent that those needs were tied to international trade they would facilitate and stimulate the task of harmonization and unification. In practice, it was a question chiefly of centralizing, co-ordinating and encouraging the activities of the various bodies dealing with those matters, not of replacing them. It was a long-term project that should be carried on simultaneously in the various sectors by methods suited to the characteristics of each and to the techniques of international trade itself, taking into account the relationship between those techniques and the task of unification itself.

3. The Secretary-General's report recommended three basic methods of furthering the progressive unification and harmonization of international trade law (see A/6396, paras. 190-195). The first was the introduction of normative regulations within the framework of international treaties and agreements; the second was the formulation, normally under the auspices of an international agency, of commercial customs and practices founded upon the usages of the international commercial community; the third was the formulation of model laws and uniform laws, on the basis of both conventional and customary rules. The latter method was particularly promising in relation to countries having similar political, economic and legal systems, especially if they were geographically contiguous and had reached a comparable stage of economic development. That was true, for example, of the countries of Latin America. It would, however, be sufficient for one or two of those conditions to be satisfied as between any two countries for the process of co-ordination to spread gradually to other geographic regions and finally embrace all countries and groups of countries in the world, regardless of their social and economic systems.

4. That work of co-ordination would make it possible to speed up and make more fruitful the first steps towards unification, which had already been made possible by the similarity, as between various countries, of the general rules of international trade law and also by the efforts of a number of intergovernmental and non-governmental organizations. In Latin America, for example, his own country not only participated in the work of the United Nations, the Economic Commission for Latin America (ECLA), the United Nations Conference on Trade and Development (UNCTAD) and the specialized agencies in that field but was very active at the regional level. It had participated in drafting the resolutions of the various inter-American Conferences and in the work of the Inter-American Council of Jurists and the Inter-American Juridical Committee. It had acceded to the Treaties of Montevideo of 1889 on civil law, commercial law and rules of procedure and had contributed to the establishment in 1934 of the Inter-American Commercial Arbitration Commission. Colombia, moreover, had adapted its domestic

legislation to the requirements of the arbitration system by recognizing, under Act No. 2 of 1938, the validity of the insertion of a compromise clause in contracts. Colombian national organizations were also collaborating in the work of the Inter-American Council of Commerce and Production and of the Inter-American Institute of International Legal Studies. Lastly, on the world level, Colombia was a member of the International Institute for the Unification of Private Law.

5. His delegation endorsed the conclusions in the Secretary-General's report regarding the role to be played in that field by the United Nations. It acknowledged that the International Law Commission was not in a position to undertake the harmonization and unification of international trade law and, accordingly, deemed it essential that a subsidiary organ of the General Assembly should be set up to be responsible for performing that task in collaboration with drawing upon the experience of the various institutions active in that field.

6. In view of those considerations, his delegation had joined a group of representatives of all legal and socio-economic systems, of the various geographical regions and of the developed and the developing countries, in submitting a joint draft resolution (A/C.6/L.613 and Add.1) that was based largely on the directives contained in the Secretary-General's report and might serve as a basis for discussion. He called on other delegations to co-operate in improving that draft so that agreement might be reached on the text of a resolution which would enable the United Nations to play a part in the progressive harmonization and unification of international trade law.

7. The sponsors of the draft resolution had wished to leave it to the Sixth Committee to make the appropriate decisions with regard to the composition of the proposed body, the renewal of its membership, its headquarters, the date of its election and that of its first meeting. He was sure that under the skilful guidance of its Chairman the Committee would reach an agreement on those matters without difficulty.

8. Mr. PHIRI (Malawi) said that even when they disliked the political or social systems of other States, most countries made every effort to do business with those States. Inasmuch as international trade was the greatest source of development finance and incentive goods for developing countries like his own, it was right and proper that those countries should be keenly interested in the harmonization and unification of international trade law. His delegation thanked the Secretary-General for his lucid and comprehensive report and congratulated the Hungarian delegation for having originated the idea behind the work of the General Assembly on the subject.

9. The Secretary-General's report indicated the work that had already been done or was being done in the field under consideration by intergovernmental organizations. Those organizations, however, were composed mostly of representatives from one region of the world. There were two reasons, he thought, for establishing a United Nations commission on international trade law. The first and principal reason was that to obtain the best results the work of unification and harmonization should be carried out under the aegis of the United Nations, the most international of institutions. The second reason was that the developing countries needed all their financial resources for their development programmes and could not afford to belong to many of the international organizations working in the field of international trade law.

10. His delegation gave its support in principle to the draft resolution before the Committee (A/C.6/L.613 and Add.1), without prejudice to any comments it might wish to make on particular paragraphs of the proposed text. It wished to express two ideas that it thought should form part and parcel of the guiding principles for the work of the proposed commission. First, inasmuch as all countries of the world were interested in the growth of international trade in general, and that of the developing countries in particular, the commission should review the existing laws and suggest how they might be adjusted so as to help reduce the gap between the rich and the poor, which was partly due to the fact that some countries gained more from international trade than others. Second, the proposed commission should not confine itself to unifying and harmonizing the laws of international trade but should also seek to simplify them so that they might be better understood by members of a commercial class that was only beginning to emerge in the developing countries and, generally, by persons other than academic jurists or professional lawyers.

11. Mr. VANDERPUYE (Ghana) said that in his delegation's opinion the world community owed much to the architects of the United Nations Charter who, perhaps better than anyone else, had realized that the maintenance of international peace and security was tied up first and foremost with the general improvement of world economic conditions and, as was clear from Article 1, paragraph 3, Article 13 and Chapters IX and X of the Charter, that the problem must be considered from both the political and economic standpoints and that its solution presupposed that legal obstacles to international trade would be removed.

12. In that respect, the role of the United Nations had so far been negligible by comparison with its activities in the economic and social field; as the Secretary-General's report indicated, the United Nations had made no attempt to survey the whole field in order to co-ordinate the activities of its organizations, and the initiative had remained with the regional organizations. International trade transcended geographical proximity and legal, social or economic affinity, and only harmonization on a world-wide scale would help reduce the obstacles of a legal nature hampering the flow of trade, while the unification of international trade law would help the developing countries that had recently achieved independence to attain equality in their international trade. The African countries, which through no fault of their own had not been involved previously, wished to participate in discussions on the world unification of laws more actively in the future. For all those reasons, his delegation supported the draft resolution (A/C.6/L.613 and Add.1), which sought to establish a United Nations commission on international trade law that would work in close consultation with UNCTAD. It approved, in particular, operative paragraph 9, which provided that the reports of

the proposed commission would be submitted simultaneously to UNCTAD and to the General Assembly because, as the Secretary-General indicated in paragraph 230 of his report, that arrangement would not only ensure the most expeditious and thorough consideration of the commission's work but the indispensable close liaison with UNCTAD, and, at the same time, provide the proposed commission with the central role and the appropriate level necessary for the effective performance of its function.

13. With regard to the membership of the proposed commission, operative paragraphs 3 and 4 of the draft resolution reflected the suggestions made by the Secretary-General, who had indicated in paragraphs 223 and 226 of his report that there should be close collaboration between legal experts and trade experts familiar with the requirements of international trade and aware of what results could be realistically achieved and that there should be participation of recognized authorities in the particular field of law concerned. Drafting a uniform law for application by States of divergent legal backgrounds was a task demanding not only a deep knowledge of the legal systems concerned but a synthetic mind able to find a compromise solution and to rise above national prejudices. The work of unification should not bring about a pure compromise but produce a text setting out in clear, understandable language the most important principles which could indicate the direction to be taken by the future development of the law. His delegation was in favour of a commission with a membership of twenty-four, chosen on the basis of equitable geographical distribution and representing the principal legal systems of the world.

14. In conclusion he thanked the Secretary-General for his report, which had enabled the Sixth Committee to hold a most productive discussion on the item under consideration.

15. Mr. RENOUARD (France) said that his delegation, too, wished to thank the Secretary-General for his report, drafted with the assistance of eminent specialists. The three main themes of the report and of the debate that the Committee had begun were the current situation of private international law, the efforts made so far to remedy it, and new proposals to intensify such efforts.

16. On the first point, he wished to point out that the original purpose of the study of the harmonization of international trade law proposed at the last session had been economic. But even though it was an undoubted fact that the current diversity of legislation, as well as conflicts of laws, could be a serious barrier to international trade, it was doubtful whether it was necessary or even possible to unify the rules of private law in that sphere on a world scale. For example, the various federal States, for the most part, had not found it necessary—indeed, not even possible—to unify trade law on a federal scale. The French delegation therefore endorsed the observations made by the Secretary-General in paragraphs 203 and 204 of his report. However, unification might be justifiable in certain clearly demarcated technical fields in which it would provide economic advantages, and it would have been useful for the report to have specified more clearly the subjects in which such unification should be attempted. What was important was to avoid any tendency to be satisfied with general considerations, and to specify clearly, in the light of needs that still had to be determined, the best solutions and the means by which they could be carried into effect.

17. As to the second theme, to which a large part of the Secretary-General's report was devoted, the French delegation felt that although the work of the existing institutions in the field under consideration was perhaps inadequate and relatively slow, it nevertheless made an essential contribution to the improvement of relations among countries with different legal systems. It wished in that connexion to associate itself with the tributes paid, in particular, to the International Institute for the Unification of Private Law and the Hague Conference on Private International Law, the work of which had borne fruit in such instruments as the Convention relating to a Uniform Law on the International Sale of Goods (Corporeal Movables), the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (Corporeal Movables), the Convention on the Contract for the International Transport of Goods by Road and the Convention on Civil Procedure.

18. On the third theme, the French delegation endorsed the Secretary-General's views that efforts should be made to improve the co-ordination of the activities of existing agencies, that the developing countries should be drawn into the work of drafting international rules within such agencies and, lastly, that the harmonization of the law of international trade should be accelerated. The work of the existing organizations, far from being reduced, should be expanded and strengthened. The French delegation considered that the United Nations should not intervene in fields in which there were already in existence well-equipped and experienced institutions that could, in future, make all necessary efforts to determine the most important issues and encourage Member States to accede to any conventions drafted; and it congratulated the Secretary-General on having stressed the need to avoid any dispersal or duplication of activities.

19. The role of the United Nations in the field under consideration should be that of an international centre responsible for regrouping, supervising, co-ordinating and stimulating the activities for the unification of international law already being carried out by existing intergovernmental and non-governmental organizations, which were open to all States desiring to take part in their work and were perfectly adequate to the task. It therefore agreed that the United Nations should be given a new and constructive role in the field of private international law, but it could not help feeling some misgivings in connexion with the proposed establishment of a United Nations commission on international trade law; it feared that such a body would have a very natural tendency to supplement and then to supplant the role that should be retained by the existing all-inclusive institutions. Moreover, the financial implications of setting up the proposed body had not yet been studied; and that was a

factor that Governments must take into account before reaching a fully informed decision.

20. The possible framework of United Nations action for the co-ordination, harmonization and unification of trade law, as well as the objectives to be aimed at and the programme to be undertaken, needed fresh study by delegations, from both the financial and the institutional standpoint. In the absence of such study any decision would be premature.

*The meeting rose at 12 noon.*

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