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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)

1. Mr. SPERDUTI (Italy) said that his delegation was satisfied with the progress that had been made on the item under discussion following its introduction by the Hungarian delegation at the nineteenth session of the General Assembly.[1] General Assembly resolution 2102 (XX) had stated certain general principles and provided for a number of preparatory steps, and the Sixth Committee currently had before it the Secretary-General's excellent report (A/6396 and Corr.1 and 2), submitted in accordance with paragraph 1 of that resolution. He endorsed the Hungarian representative's evaluation of that report; indeed, he had advised the students in his advanced course in private international law at the University of Pisa to study the report if they wished to have a full and accurate picture of the problems relating to international trade relations in private international law. The Secretary-General had been well advised to have Professor Schmitthoff prepare a preliminary study and to obtain comments from a number of experts. Consultation with organizations and institutions concerned with the unification and harmonization of international trade law had also helped to produce the excellent results. Extensive and constructive use should be made of the International Institute for the Unification of Private Law (UNIDROIT) and the Hague Conference on Private International Law. Their ties to the United Nations should be strengthened and their field of action enlarged. Steps should be taken, in particular, to encourage the participation of a greater number of African and Asian countries in their activities.

2. The Hague Conference on Private International Law had been established as part of a movement of internationalist legal thought that had flourished at the end of the last century. As the Secretary-General's report noted (ibid., para. 38), its origin could be traced to the influence of the Italian jurist Pasquale Mancini. The idea of an organization to promote international collaboration in private substantive law had also been initiated by an Italian jurist —Vittorio Scialoja. Moreover, the Italian Government had provided the funds for the establishment of UNIDROIT in 1926 and for its operation. Although other States had recently begun to contribute to UNIDROIT, it was still supported largely by the Italian Government. Details of the accomplishments of UNIDROIT over the past forty years could be found in the Secretary-General's report (ibid., paras. 27-37). Its work had foreshadowed the United Nations programme proposed in General Assembly resolution 2102 (XX). UNIDROIT itself had recommended, and to some extent carried out, the co-ordination of the work of the various institutions concerned with the unification and harmonization of private law. That co-ordination took the form of voluntary collaboration through regular meetings and exchanges of information, in which the autonomy of the individual institutions was preserved.

3. Thus, if the General Assembly decided to establish a United Nations commission responsible for furthering co-operation in the development of the law of international trade and promoting its progressive unification and harmonization, every provision should be made to ensure that the commission, far from attempting to monopolize international efforts and activities, secured the benefit of the regular and constant assistance and the experience of the various institutions already working in that field. Consideration might be given to establishing relations with some of those institutions which would be similar to the relations existing between the General Assembly and the Economic and Social Council, on the one hand, and the specialized agencies, on the other hand. UNIDROIT, in particular, as the organization most directly specializing in the "preventive" method, whose work in the preparation of draft conventions was widely recognized as being of great value, might become one of the principal organizations collaborating with the new United Nations commission in the elaboration of uniform laws and the preparation of draft international conventions on uniform laws. In that connexion, he recalled that the Secretary-General, in the introduction to his annual report on the work of the Organization, had said that in the face of unlimited global needs, the most rational and effective utilization of available resources was not merely a desirable objective but a practical necessity.[2]

4. His delegation hoped that all the complex problems of international trade law would be carefully considered by the Sixth Committee and that reasonable

[1] See Official Records of the General Assembly, Nineteenth Session, Annexes, annex No. 2, document A/5728.

[2] Ibid., Twenty-first Session, Supplement No. 1A (A/6301/Add.1), p. 1.

and constructive action would be taken. In particular, the developing countries must be enabled to participate actively in the formulation of an international trade law responsive to the needs of the modern world and to take effective advantage of all forms of assistance offered by the United Nations and by other governmental and non-governmental organizations in formulating and improving their internal legislation and their commercial practices.

5. Mr. POTOCNY (Czechoslovakia) said that his delegation, which attached great importance to the progressive development of international trade law, wished to express its appreciation of the Hungarian initiative that had led to the consideration of the item under discussion. International trade offered a meeting place for the economic interests of individual States. The steady growth of trade relations among States emphasized the internationalization of the production and exchange of goods that was characteristic of the current world economic situation.

6. Economic contacts must necessarily be reflected in the legal sphere, both in public international law and in the legal provisions governing the mutual rights and obligations of the parties to commercial contracts in international trade. The laws of individual States were most similar with respect to their provisions governing international trade contracts; indeed, the law of international trade was remarkably similar in all States, despite differences in basic legal concepts which reflected differences in economic, social and political systems. That similarity was due to the fact that in all States legislative provisions, if they were to serve their purpose, must respect the technique and the practices of international trade. Under the current international system of production and exchange of goods, the smooth flow of international commerce depended in large part on the maintenance of a balance between sellers and buyers; consequently, individual States had to assume—willingly or not—that their nationals would be sellers on one occasion and buyers on another. As a result, the possibility that an individual legal system would give preferential treatment to sellers or buyers, was practically excluded; there was a universal trend towards balancing the interests of buyers and of sellers in legal provisions. That in turn, led to certain similarities in the legal provisions governing the specific rights and obligations of the parties to international commercial contracts. Nevertheless, the influence wielded by the social and economic structure of individual States, by their legal tradition and by other relevant fields of their law still persisted.

7. Although the similarities arose mainly from general regulations, international trade often required special legal regulations, both national and international. Despite the existence of a separate and autonomous law of international trade that was, to a considerable extent, independent of the legislation of individual States, the objective necessity of maintaining an unobstructed flow of international trade had led States to attempt to ensure the legal stability of the rights and obligations of parties to international commercial contracts through various legal instruments. National commercial laws, such as the French and German commercial codes, which had served as models for the commercial codes of many other countries, and even the Swiss codification of the law of obligations and the Italian Civil Code of 1942—those extensive bourgeois codifications of civil law promulgated in the twentieth century—rarely met the needs of the current highly developed international trade. Thus there had been a tendency to overcome some of the short-comings of the commercial law and the civil law of the capitalist States through the establishment of special commercial customs and usage and the formulation in various commercial centres of standardized contracts and delivery terms for various types of goods. Those special regulations governing certain aspects of international trade were established as a rule within the framework of the autonomy of will and contractual freedom provided for in the commercial law and civil law of the bourgeois countries.

8. Although the creation of international trade law through the autonomy of parties to international commercial contracts might seem to be spontaneous, in fact various international institutions, both governmental and non-governmental, had played an important role in stimulating that process by formulating commercial customs and usage, by drawing up standard or model contracts for different types of goods and by urging the parties to international commercial contracts to trade on the basis of general terms drawn up for different types of goods. Such institutions included the International Chamber of Commerce, which had drawn up Incoterms, a number of United States organizations, which had prepared the Revised American Foreign Trade Definitions, and the International Law Association, which was responsible for the Warsaw-Oxford Rules. The special groups of experts set up by the United Nations Economic Commission for Europe to regulate East-West trade had drawn up a relatively large number of general terms of delivery and model contracts for specific types of goods, which parties to commercial contracts might make applicable by including a special clause in the contracts themselves.

9. On a quite different level, attempts had been made over the past several decades to unify the rules of substantive law governing international sales contracts in the form of international treaties or model laws. In western Europe, the activities of UNIDROIT had culminated in two drafts of uniform laws adopted by a diplomatic conference held at The Hague in 1964. The most comprehensive unification of the rules governing international sales contracts on the inter-State level was the General Conditions of Delivery of Goods between Foreign Trade Organisations of Member Countries of the Council for Mutual Economic Aid in 1958. Those General Conditions, however, in contrast to the 1964 drafts, were intended to apply not to all international sales contracts but only to transctions between the foreign trade corporations of the States members of the Council for Mutual Economic Aid (COMECON). They included not only mandatory provisions of substantive law but uniform rules concerning conflict of laws.

10. In 1963 his country had promulgated a new International Trade Code, which exemplified the trend

towards the comprehensive regulation, in domestic legislation, of relations arising in international trade. The basic purpose of the Code was to provide such legal certainty as would promote the development of international trade to the benefit of all participants irrespective of their differing social and political systems and levels of economic development. The rights and obligations of the parties to international sales contracts, unless clearly specified in the particular contract, were governed by the provisions of the Code. At the same time, however, the parties might, if they wished, depart in their contract from most of the Code's provisions. In the drafting of the Code, a serious effort had been made to suit the text to the actual needs of international commerce, by taking into account not only Czechoslovakia's own experiencience but contemporary international and foreign regulations, such as the Draft Convention relating to a Uniform Law on the International Sale of Goods of 1956, the Egyptian Civil Code of 1948, the Uniform Commercial Code as enacted in Pennsylvania in 1963, the Ghanaian Sales of Goods Act of 1961, the Principles of Civil Legislation of the USSR of 1962, and some older texts. Provisions from those regulations had not been mechanically copied, however; they had been incorporated in the International Trade Code only after a critical evaluation. The Code contained some innovations and covered some questions that had not previously been subject to regulation. It governed not only relations arising under international sales contracts but all civil law relations between parties to international commercial contracts. Thus, the 726 sections of the Code covered practically the whole range of questions involved in the legal regulation of international trade. The stated purpose of the Code was to enact rules regulating completely property relations arising in international trade, based on the principle of full equality under the law and of the inadmissibility of any discrimination against any of the parties in international trade, to foster the development of Czechoslovakia's economic relations with all countries, regardless of their social and political systems, and thus to contribute to the strengthening of peaceful coexistence and friendship among nations.

11. Mr. KJELDGAARD-OLESEN (Denmark) requested that the statements made at the 946th meeting by the representatives of UNIDROIT and of the Hague Conference on Private International Law should be reproduced as Committee documents.

12. The CHAIRMAN said that it was the practice in the Sixth Committee to have the introductory statements made by representatives of subsidiary organs of the General Assembly and of intergovernmental organizations invited to participate in the Committee proceedings included as fully as possible in the summary records.

The meeting rose at 4.15 p.m.

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