

United Nations
**GENERAL
ASSEMBLY**

TWENTY-FIRST SESSION

Official Records

**SIXTH COMMITTEE, 946th
MEETING**

Friday, 2 December 1966,
at 3.30 p.m.



NEW YORK

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Chairman: Mr. Vratislav PĚCHOTA
(Czechoslovakia).

AGENDA ITEM 88

Progressive development of the law of international trade (A/6396 and Corr.1 and 2 and Add.1 and 2)

1. The CHAIRMAN introduced the item, drawing attention to the Secretary-General's report (A/6396 and Corr.1 and 2), the comments made by the International Institute for the Unification of Private Law (UNIDROIT) and the Hague Conference on Private International Law (See A/6396/Add.1) and the resolution recently adopted on the subject by the Council of the International Chamber of Commerce (see A/6396/Add.2).

2. Mr. Van Hoogstraten, Secretary-General of the Hague Conference on Private International Law, Mr. Matteucci, Secretary-General, of the International Institute for the Unification of Private Law, and Mr. Vis, Deputy Secretary-General of the Institute, were present. It would be remembered that in 1958 the Economic and Social Council had adopted resolution 678 (XXVI), concerning co-operation, co-ordination and exchange of information and documentation between the United Nations, on the one hand, and the Hague Conference and UNIDROIT, on the other, on matters of mutual interest. In view of their interest in the harmonization of the law of international trade, the two organizations had been invited by the Secretary-General to be represented at meetings of the General Assembly on the item. Mr. Matteucci and Mr. van Hoogstraten wished to make statements to the Committee, and if there was no objection their request might be granted.

It was so agreed.

3. Mr. STAVROPOULOS (Legal Counsel) said that in preparing his report the Secretary-General had been assisted by Professor Clive Schmitthoff of the City of London College, a well-known authority on the law of international trade. On the basis of Professor Schmitthoff's study, the Secretary-General had prepared a draft report, which had been sent for comment to five experts in the field. Those who had replied—namely, Dr. Elias of Nigeria, Professor Eorsi of Hungary, Professor Reese of the United States and Professor Yasseen of Iraq—had expressed

full agreement with the conclusions and suggestions contained in the report. He paid a tribute to them for their assistance. The Office of Legal Affairs had also sent the draft report to the Secretariat units most directly concerned, namely, the Department of Economic and Social Affairs, the Centre for Industrial Development, the United Nations Conference on Trade and Development (UNCTAD) and the regional economic commissions. Consultations had been conducted with the specialized agencies and other institutions most directly concerned.

4. In the light of the survey made of the work done in the field over the past years, the Secretary-General had reached the conclusion that the General Assembly might wish to consider the possibility of establishing a new United Nations commission that would be responsible for furthering the progressive harmonization and unification of the law of international trade. The reasons for establishing such a commission and its suggested functions, composition and status were set out in detail in paragraphs 225-234 of the Secretary-General's report. It would be noted that the arrangements envisaged in the report, which had been worked out in full agreement with the Secretary-General of UNCTAD, provided for close collaboration with that body.

5. Mr. USTOR (Hungary) reminded the Committee that his delegation had played an initiating role with regard to the item under discussion.^{1/} Its initiative had received a favourable response in many scientific quarters. Thus the Conference of the International Academy of Comparative Law, held in Uppsala, Sweden, in August 1966, had dealt with the problem of co-ordinating movements to unify the law of international trade, and in its general report it had expressed the view that the establishment of a consultative regulatory organ was desirable. In the third quarterly issue of *Revue critique de droit international privé* for 1966 Professor d'Oliveira of the Netherlands hailed Hungary's proposal as one that might replace the current regionalistic approach with a trend towards universalism. It was a source of special satisfaction to the Hungarian delegation that both the International Institute for the Unification of Private Law and the Hague Conference on Private International Law had welcomed the proposal to establish an organ under the aegis of the United Nations and agreed that it should become a centre for co-ordination of the work of the existing agencies. It could even, with due regard for the activities of the existing agencies, act as a formulating agency. He paid a

^{1/} See Official Records of the General Assembly, Nineteenth Session, Annexes, annex No. 2, document A/5728; and *ibid.*, Twentieth Session, Annexes, agenda item 92, document A/5933 and A/C.6/L.571.

tribute to the two organizations, whose importance in the field was generally recognized. He also welcomed the resolution of the Council of the International Chamber of Commerce and the willingness to co-operate shown by UNCTAD, noting that legal theory must not lose contact with the practical world of trade.

6. The report prepared by the Secretary-General was an excellent presentation of the subject, comparable to the report prepared by the Secretariat under General Assembly resolution 175 (II) in preparation for the work of the International Law Commission. It was to be hoped that it would have a similar impact. His delegation was grateful to Professor Schmitthoff and the other five experts consulted by the Secretariat for their assistance. It had been a good idea to invite Professor Schmitthoff to attend the debate, and it would have been desirable to invite the other experts as well, if the financial situation had permitted. He was glad to note that Professor Yasseen was present as representative of Iraq. The report was so valuable that it should be preserved for future generations, and he hoped that it would be reproduced in full in the United Nations Juridical Yearbook.

7. Nothing could demonstrate the need for co-ordination and concerted action in regard to trade law more clearly than chapter II of the Secretary-General's report. It listed the areas in which most progress had been made towards the unification and harmonization of the law of international trade, among which the law of the international sale of goods was mentioned as the first and possibly the most important (see A/6396, para. 184). At least eleven agencies dealt with that general subject or with aspects of it. The Economic Commission for Europe, for example, had achieved tangible results by drawing up the General Conditions for Sale and Standard Forms of Contract (*ibid.*, para. 185). The General Conditions of Delivery of Goods issued by the Council for Mutual Economic Aid in 1958 (*ibid.*) served as a basis for trade between socialist States. There were other systems and devices that functioned well, but they were still far from constituting a world-wide system that would embrace most if not all, the developing countries. The Conventions of 1 July 1964 promoted by UNIDROIT (*ibid.*) were the most notable steps taken towards a world-wide system, but they had been signed by only five States outside Europe and had not yet been ratified by any of the signatories. The state of affairs in that particular field raised two questions: namely, the relationship between regional and world-wide measures of unification and harmonization and the relative feasibility of unification and harmonization between similar and between different legal and socio-economic systems. The answers were to be found in chapter III of the report: regional and universal efforts were complementary, not mutually exclusive; progress was easier between similar systems but not impossible between different ones. Although the statement that "rapprochement of different economic systems" was a feature of the current age (*ibid.*, para. 202) was open to question, it was true that international trade was an important link between the contesting

systems and that its further development was both desirable and feasible.

8. As to whether the expression "harmonization and unification of the law of international trade" covered only the harmonization and unification of substantive rules or covered rules regulating the conflict of laws as well, he had no doubt that unification of substantive rules was the most effective method of reducing conflict between the laws of different States. The tendency to concentrate on agreements on rules relating to the choice between competing substantive rules and jurisdictions to some extent ran contrary to that objective, inasmuch as it tended to perpetuate existing differences in the substantive law. However, that "clinical" method, as it was called in paragraph 16 of the Secretary-General's report, could not be abandoned at the current stage of development. In the process of unifying substantive rules, the parties had to think of the questions that would not be covered by the results of their efforts and therefore usually agreed on choice-of-law rules. His delegation would thus accept a broad interpretation of the expression "harmonization and unification", with express reference to the point made by the Hague Conference in paragraph 13 of its comments in document A/6396/Add.1.

9. The report pointed out that the developing countries had hardly participated in the efforts to modernize the law of international trade. It recognized that they needed adequate laws if they were to gain equality in international trade. The report quoted his own statement at the 894th meeting of the Sixth Committee during the twentieth session of the General Assembly to the effect that such modernization must be undertaken if the developing countries were not to be at the mercy of more experienced trade partners. In the opening paragraph of its comments the Hague Conference pointed out another aspect of the matter when it said that unification should not be delayed too long in case individual countries proceeded to adopt legislation independently; activities undertaken without delay could have the greatest impact on the systems of the new countries, which, by participating fully in those activities, would probably be able to achieve harmonization of their respective legal systems* (see A/6396/Add.1). The developed countries, however, would also benefit. They would gain indirectly, because the progress of the developing countries was in the interests of all, but they also had a direct interest in the elimination of waste due to the unco-ordinated activities of different agencies and to the existing multiplicity of national trade laws.

10. The fact that action was desirable, and desirable on the part of the United Nations, needed no further demonstration. The report rightly stated that the unification and harmonization of the law of international trade was an appropriate subject for United Nations action. It rejected the view that the activities of existing formulating agencies made such action unnecessary. On the contrary, it expected United Nations participation in the field to make those agencies more useful and add to their chances of success. It concluded that the role of the United Nations, or of the organ established by it, would

be primarily, but not solely, co-ordination and that it could perform formulating functions when appropriate. As to doubts about the chances of success, similar doubts about the difficulty of the task must have beset those who in 1946 and 1947 had prepared to begin the codification and progressive development of public international law and had established the International Law Commission. As stated in the report prepared by the Secretariat at that time, the decisive criterion must not be the ease with which the task of codifying any particular branch of international law could be accomplished but the need for codifying it. The same applied, *mutatis mutandis*, to the case at hand. It was his delegation's hope that the work currently being undertaken would prove of benefit to both developing and developed countries and, hence, to the whole international community.

11. Mr. MATEUCCI (International Institute for the Unification of Private Law) thanked the Secretary-General for having drawn attention in his report to the activity of UNIDROIT in the field of the unification and harmonization of private law. He recalled that UNIDROIT had been established as the result of an agreement concluded between the Italian Government and the League of Nations for the specific purpose of studying and preparing the unification of the laws of various groups of States under the direction of a council of legal experts appointed by the League. It had worked in close contact with the League, through which it had submitted uniform texts of conventions and laws to member Governments. Its policy, on the one hand, had been to limit its work of unification to laws governing international relations and to exclude from its purview domestic laws governing purely domestic relations. On the other hand, it had selected for study only those subjects in which the need for unification was most obvious. It might be said that the ties between UNIDROIT and the League of Nations had been closer and more intimate than those currently existing between the United Nations and the specialized agencies. Unfortunately, its collaboration with the League had failed to produce the expected results because of the crisis that had finally confronted the latter organization and had found its tragic conclusion in the Second World War.

12. He had referred to the relations between UNIDROIT and the League of Nations in order to show that the initiative taken by the United Nations, on the proposal of the Hungarian delegation, was only the continuation and extension of a similar activity carried on by the League forty years before. UNIDROIT had welcomed the Hungarian proposal aimed at giving a fresh impetus to all activities seeking to harmonize national laws with respect to trade. It would mean a continuation of the work that had resulted in the signing of the Geneva Conventions on the unification of the law relating to bills of exchange (1930) and those establishing a uniform law relating to cheques (1931), as well as the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927.

13. UNIDROIT itself had requested the United Nations to take action in the field of the unification of law,

with a view to co-ordinating the activities, both regional and world-wide, of the different bodies engaged in that field. In 1963, at one of the periodic meetings held by the Institute for the purpose of considering, together with other interested organizations, methods of unification, a proposal had been adopted in which the United Nations was requested to co-ordinate the efforts of the various organizations, with a view to avoiding duplication and, in particular, eliminating conflict between the efforts at unification being made at different levels. The organizations attending that meeting had emphasized that the activity of the United Nations should be carried out in a flexible way that would leave complete freedom of action to the governmental and non-governmental bodies concerned. He noted with satisfaction that the solutions suggested in the Secretary-General's report did not differ substantially from the ideas put forward in the proposal to which he had just referred, inasmuch as the proposed United Nations commission on international trade law was intended to be primarily a co-ordinating body.

14. The Secretary-General's report had made it clear that the unification of the rules of international trade was not the monopoly of a single organization. In the field of transport law alone—a branch of commercial law in which very important results had already been achieved—there were at least four organizations active at the world level: the International Civil Aviation Organization (ICAO), the International Maritime Committee (IMC), the Economic Commission for Europe (ECE) and the International Institute for the Unification of Private Law (UNIDROIT), in so far as its activities in the field of highway and waterway transport were concerned, not to mention such regional bodies as the Central Office for International Transport by Rail, the Danube Commission and the Central Commission for the Navigation of the Rhine. In the equally important field of patents, trademarks and models, mention should also be made of the United International Bureaux for the Protection of Intellectual Property (BIRPI). In the field of trade, UNIDROIT had already submitted two uniform draft laws on the international sale of goods for signature by Governments and had requested their observations on other drafts.

15. In conclusion, he said that UNIDROIT associated itself fully with the efforts currently being made by the United Nations to bring about the progressive development of the law of international trade. He would be available at any time for consultation by members of the Committee.

16. Mr. VAN HOOGSTRAATEN (Hague Conference on Private International Law) congratulated the Secretary-General on his excellent report on the progressive development of international law, which contained a brief account of the work of his own organization (see A/6396, paras. 38-49). The importance of the unification of private law in matters of commerce was generally recognized, particularly in the case of the newly independent countries, which were more vulnerable than others to the effects of unequal and dissimilar legislation. In that connexion, he pointed out that membership in his organization was not limited to European countries, but, under its Statute, was open

to all countries: its twenty-three member States included, for example, the United Arab Republic, Japan, the United States of America and Israel. He also stated that one of the Hague Conventions—that on civil procedure—was adhered to by a certain number of eastern European States: Hungary, Poland, Czechoslovakia and, lastly, the USSR. He was convinced, therefore, that the results it had achieved to date in drawing up conventions in the field of commercial law could be very useful to all other organizations in that field, including the proposed United Nations commission on international trade law. The Hague Conference, of course, was primarily interested in the unification, by the conclusion of treaties, of the rules of the conflict of laws in the various national jurisdictions; whereas the Secretary-General suggested that the new commission would

not necessarily give priority to the unification of conflict rules. In any case, the Hague Conference would go on to deal with this matter without wishing to limit its scope to a regionalism without reason. He stressed the fact that all organizations that were active in the field of unification, whether in providing general guidance or in drafting model texts, should avoid hasty decisions and should aim at quality rather than quantity. In particular, they should take care to avoid being unduly influenced, in their work of codification, by ephemeral political events. Lastly, he was confident that the proposed commission would be able to benefit greatly by the Hague Conference's many years of experience in the field of the codification of law.

The meeting rose at 4.40 p.m.