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REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL
TRADE LAW ON THE WORK OF ITS FIFTH SESSION

Report of the Sixth Committee

Rapporteur: Mr. B. A. SHITTA-BEY (Nigeria)

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I. INTRODUCTION

1. At its 2037th plenary meeting, on 23 September 1972, the General Assembly included the item entitled "Report of the United Nations Commission on International Trade Law on the work of its fifth session"^{1/} as item 86 on the agenda of its twenty-seventh session, and allocated it to the Sixth Committee for consideration and report.
2. The Sixth Committee considered this item at its 1328th to 1336th meetings from 10 to 18 October 1972 and at its 1345th and 1354th meetings on 27 October and 8 November 1972.
3. At its 1328th meeting, on 10 October 1972, Mr. Jorge Barrera-Graf (Mexico), Chairman of the United Nations Commission on International Trade Law at its fifth session, introduced the Commission's report on the work of that session.^{2/}
4. At the 1354th meeting, on 8 November, the Rapporteur of the Sixth Committee raised the question whether the Sixth Committee wished to include in its report to the General Assembly a summary of the views expressed during the debate on agenda item 86. After referring to paragraph (f) of the annex to General Assembly resolution 2292 (XXII) of 8 December 1967, the Rapporteur informed the Committee of the financial implications of the question. At the same meeting, the Committee decided that, in view of the nature of the subject, the report on agenda item 86 should include a summary of the main trends of opinions expressed during the debate.

II. PROPOSALS

5. At the 1345th meeting, on 27 October 1972, the representative of Ghana introduced a draft resolution on the report of the Commission sponsored by Australia, Canada, Ghana, Greece, Guyana, Japan, Kenya and Norway (A/C.6/L.861). In the course of his introduction, the representative of Ghana, on behalf of the

^{1/} Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717).

^{2/} This presentation was pursuant to a decision by the Sixth Committee at its 1096th meeting, on 13 December 1968 (see Official Records of the General Assembly, Twenty-third Session, Annexes, agenda item 88, document A/7408, para. 3).

sponsors orally revised the draft resolution (A/C.6/L.861/Rev.1). At the same meeting, Egypt, Haiti, Hungary, India, Singapore, Spain, Uruguay and Zaire were added to the list of sponsors of the draft resolution. At the 1354th meeting on 8 November, Romania was also added to the list of sponsors of the draft resolution. The revised draft resolution was adopted by the Sixth Committee without objection (see para. 45 below).

6. At the same meeting, the representative of Ghana introduced a draft resolution on a proposed international conference of plenipotentiaries on prescription (limitation) in the international sale of goods, which was sponsored by Australia, Egypt, Ghana, Greece, Guyana, India, Indonesia, Japan, Romania, Spain, the Sudan and the United Kingdom of Great Britain and Northern Ireland (A/C.6/L.864). At the same meeting, Kenya, Norway and Singapore were added to the list of sponsors. The draft resolution was adopted by the Sixth Committee without amendment (see para. 46 below).

7. The statement of the financial and administrative implications of the draft resolution contained in document A/C.6/L.864 appears in document A/C.6/L.865 and Corr.1.

III. DEBATE

8. The main trends of opinions expressed in the Sixth Committee on the item are summarized in sections A to G below. Section A deals with general observations on the Commission's report and its working methods. The succeeding sections, relating to specific topics on the Commission's programme of work, are set out under the following headings: international sale of goods (section B), international legislation on shipping (section C), international payments (section D), international commercial arbitration (section E), training and assistance (section F) and future work (section G).

A. General observations on the Commission's report and its working methods

9. Most representatives who took the floor expressed appreciation for the rapid and substantial progress the Commission had made towards the unification and harmonization of international trade law. The view was advanced that the

Commission's fifth session was particularly productive and had resulted in concrete and significant achievements. It was emphasized that, by removing or reducing legal obstacles to the flow of international trade, the Commission would greatly contribute to the economic growth of all nations and to the development of friendly relations among States.

10. Several representatives expressed satisfaction with the Commission's working methods and with the pragmatic and flexible manner in which it had been discharging its tasks. Other representatives, while appreciating the efforts made by the Commission at its fifth session to enhance the efficiency of those working methods, were of the opinion that there was room for improvement. In this connexion, several representatives took note with appreciation of the proposal by Spain concerning the Commission's working methods, with special reference to the need for longer drafting sessions by small groups, and expressed the hope that due attention would be given to it at the sixth session of the Commission.

11. Several representatives were of the opinion that, in order to achieve a balanced and accelerated progress in all matters included in the Commission's programme of work, the Commission should make more use of the expertise of its members and of the services of international organizations with special competence in these fields. It was also suggested that working groups should meet more frequently between sessions of the Commission and for a longer period of time. Some representatives, however, cautioned against excessive use of intersessional working groups because of the cost involved.

12. One representative suggested that while the preparation of uniform substantive rules on the various subjects before the Commission was a useful unification technique, other methods, such as the harmonization of the rules of conflict laws, should not be overlooked. It was also suggested that the Commission should not confine its attention to revision of the rules embodied in existing conventions, but should also endeavour to formulate new instruments.

B. International sale of goods

13. All representatives who spoke on the subject welcomed the draft articles on prescription (limitation) in the international sale of goods that had been prepared by the Commission. The view was expressed that the draft articles constituted a

significant contribution to the goal of unification and harmonization in an important area of international trade law. Both the Commission and its Working Group on Time-limits and Limitations (Prescription) in the International Sale of Goods were commended for the speed with which the draft articles were prepared, and for the spirit of compromise and accommodation that prevailed throughout their deliberations.

14. Several representatives stated that, while they had some reservations about certain of the provisions of the draft articles on prescription, they were of the opinion that the draft articles on the whole provided a good basis for further discussion in a suitable forum with a view to concluding an international convention on the subject. In this connexion, it was noted with satisfaction that the Commission had decided to circulate the draft articles, together with a commentary thereon, to Governments and interested international organizations for comments and proposals. It was also noted that the Secretary-General had been requested to prepare an analytical compilation of the comments and proposals received and to circulate the same to Governments and interested international organizations.

15. In view of the highly technical and specialized nature of the draft articles in question, many representatives endorsed the Commission's recommendation that the General Assembly should convene an international conference of plenipotentiaries to conclude, on the basis of the draft articles approved by the Commission, a convention on prescription (limitation) in the international sale of goods. Taking into consideration the Secretary-General's appeal for limitation of the United Nations budgetary expenses, some representatives were of the opinion that the proposed conference should be held in New York.

16. Some representatives were of the opinion that it might be premature to convene the proposed conference of plenipotentiaries since the Commission was unable to reach a consensus on a number of provisions in the draft articles. Consequently it was suggested that the question of convening the conference should be postponed until next year and that the Commission should, in the meantime, try to reach agreement on those provisions in the light of the comments and proposals of Governments and interested international organizations.

17. Some representatives expressed the view that there was a close relationship between the Commission's work on uniform rules on the international sale of goods and the draft articles on prescription. It was, therefore, suggested that the

convening of an international conference of plenipotentiaries should be postponed until the Commission completed its work on the uniform law on the international sale of goods, so that the draft articles on both subjects could be considered at one conference. In the view of other representatives, the draft articles on prescription should be dealt with by an international conference of plenipotentiaries as soon as possible independently of the Commission's work on a uniform law on sales, since the two instruments dealt with different matters, the former with the period of limitation of legal proceedings, and the latter with the substantive rights and duties of the parties where the action was not time-barred. Furthermore, it was mentioned that the revision of the uniform rules embodied in the Hague Convention relating to a Uniform Law on the International Sale of Goods of 1964 (ULIS) was a highly complex and controversial matter that would require several years.

18. Some representatives stated that since the draft articles on prescription dealt with a matter concerning international trade in which all nations had been taking part, participation at the conference should be open to all States without discrimination.

19. Several representatives welcomed the progress made by the Working Group on the International Sale of Goods, at its third session, in the revision of the rules embodied in the Hague Convention of 1964 relating to a Uniform Law on the International Sale of Goods (ULIS). It was stated that the existing rules of ULIS did not take sufficient account of the interests of all States, especially those of developing countries.

20. Some representatives expressed concern at the slow rate of progress in this vital area of the Commission's work and hoped that the Commission would find new ways of accelerating its work in this field. The suggestion was made that the Working Group on the International Sale of Goods should hold at least two sessions a year, each lasting for a period of three weeks. It was also suggested that a small group of experts might be established to work on the complex and difficult aspects of the work of revision.

21. Some representatives stated that in view of the fact that ULIS had been ratified by some States and had already entered into force, it might be advisable to postpone the revision of ULIS until some experience had been acquired in the

operation of its rules in practice. The same representatives hoped that, at any rate, the Commission's revision of the rules of ULIS would not discourage additional ratifications of that Convention.

22. Several representatives emphasized the importance of developing general conditions of sale that would embrace a wide scope of commodities, and expressed the hope that the Commission's activity to that end would soon be brought to fruition. Some representatives observed that the Commission should make a wider use of the general conditions of sale elaborated by the United Nations Economic Commission for Europe.

23. Some representatives suggested that the proposed general conditions of sale should be based on the general principles of any future uniform law on the international sale of goods that the Commission might recommend.

24. Some representatives expressed doubt as to the commercial need for the Commission to draw up general conditions of sale in view of the fact that only those general conditions of sale that were drawn up for particular commodities by trade associations having specialized knowledge of the trade had gained wide acceptance in business circles.

C. International legislation on shipping

25. Many representatives observed that the subject of international legislation on shipping was of particular importance to their respective countries. These representatives were of the opinion that the International Convention for the Unification of certain Rules relating to Bills of Lading, done at Brussels in 1924,^{3/} was not responsive to contemporary needs and was heavily weighted in favour of the carriers.

26. Many representatives welcomed the progress achieved by the Commission's Working Group on International Legislation on Shipping in the examination of the rules governing the responsibility of ocean carriers for cargo in the context of bills of lading, and agreed with the Commission's suggestion that the Working Group

^{3/} League of Nations, Treaty Series, vol. CXX, No. 2764, p. 157.

should consider preparing a new convention on the subject instead of merely revising and amplifying the rules embodied in the 1924 Brussels Convention and the Protocol amending that Convention, done at Brussels in 1968.^{4/} Some representatives stated that, while there was a need for the revision of the rules embodied in the 1924 Brussels Convention in view of recent technological developments, it was important to retain the fundamental principles of that convention since they were based on considerable experience and were adopted by the overwhelming majority of States. One representative agreed that there was a need for the revision of the 1924 Brussels Convention, but indicated that it was not for the Commission to undertake the drafting of a new convention.

27. Several representatives suggested that the new convention should be based on the carrier's contractual responsibility for the safe delivery of the cargo. It was also suggested that the new convention should take account of the rules embodied in international conventions concerned with other modes of transport of goods, and that the correlation of the rules for the different types of carriage was essential in view of the growing importance of combined transport operations and containerization and unitization of cargo.

28. Several representatives observed that recent technological advances had considerably reduced the hazards of ocean transportation, thereby decreasing insurance risks for shipowners; consequently, it was suggested that this fact should result in lower freight rates and assumption of greater responsibility by the carrier.

D. International payments

29. Many representatives who spoke on the subject expressed appreciation for the progress made on the subject of negotiable instruments and welcomed the draft uniform law on international bills of exchange and the commentary thereon that were embodied in a report of the Secretary-General (A/CN.9/67 and Corr.1). Several representatives observed that the draft uniform law in question was a notable advance in the field. It was observed that the establishment of uniform rules for negotiable instruments used in international payments when the parties opted for such rules would be the best solution for the many problems arising from divergencies among the rules of different legal systems.

^{4/} Société du Journal de la Marine marchande, Le Droit maritime français, vol. 20, No. 235 (July 1968), p. 396.

30. Many representatives also welcomed the establishment of the Working Group on International Negotiable Instruments and noted with satisfaction that the size of the Working Group had been kept to a minimum without detriment to its representative character.

31. Several representatives endorsed the Commission's decision to extend the scope of the draft uniform law to cover promissory notes and possibly cheques. Some representatives, however, suggested that cheques served distinct commercial functions, and should be governed by a separate uniform law.

32. Several representatives expressed the view that, in examining the draft uniform law on international bills of exchange, the Working Group should take account of recent technological developments in payment methods and practices. One representative, however, observed that rules premised solely on such technological developments might not meet the conditions of developing countries.

33. One representative was of the opinion that there was no pressing need for a new convention on negotiable instruments, and that the international business community had adapted itself to the differences between the Geneva Conventions of 1930 and 1931 providing uniform laws for bills of exchange and promissory notes and for cheques, respectively, on the one hand, and the common law rules on the other.

34. Several representatives welcomed the Commission's co-operation with the International Chamber of Commerce (ICC) on the work it initiated on the subjects of bankers' commercial credits and bank guarantees, and welcomed the measures taken by the Commission to ensure that the views of countries not represented in the International Chamber of Commerce were taken into account by it.

35. Some representatives suggested that the Commission should not entrust its work on these subjects to the International Chamber of Commerce in view of the fact that not all States were represented in the latter.

E. International commercial arbitration

36. Many representatives stressed the importance of arbitration as an effective means for the settlement of international trade disputes. Special tribute was paid to the Commission's Special Rapporteur, Mr. Ion Nestor (Romania), for the valuable report he had submitted on problems concerning the application and interpretation of the existing conventions on international commercial arbitration and other

related matters (A/CN.9/64). Several representatives expressed the view that the recommendations embodied in the Special Rapporteur's report constituted a sound basis for future action by the Commission on the unification and harmonization of the law in this important area, and endorsed the Commission's decision thereon.

37. Some representatives observed that in view of the importance of the recommendations of the Special Rapporteur, these recommendations should have been circulated to all States Members of the United Nations, and not just to members of the Commission.

F. Training and assistance

38. Many representatives emphasized the need of developing countries for an expanded and vigorous programme of training and assistance in the field of international trade law. Several representatives endorsed the Commission's decision on the subject and expressed the hope that the Secretary-General would accelerate and intensify the activities relating to the implementation of the Commission's programme of training and assistance in the field of international trade law.

39. Several representatives suggested that, in addition to the activities included in the Commission's programme of training and assistance, it would be profitable to explore the possibility of arranging seminars which would be held in the developing countries and would be conducted by visiting professors and experts from the developed countries. It was observed that such seminars would make it possible to reach a considerable number of personnel from the developing countries with minimum cost.

40. One representative indicated that a programme of instruction of a rather general and basic character in international trade law would prove valuable to lawyers and civil servants from developing countries. In this connexion, this representative outlined the programme of instruction that his Government had evolved in the past few years for the benefit of developing countries, and announced his Government's intention to intensify this programme.

G. Future work

41. Many representatives expressed the view that multinational enterprises, because of their structure and orientation, had interests and objectives which might not always accord with national economic objectives. It was further stated by some representatives that these enterprises had a tendency to circumvent national legal jurisdictions in many diverse fields such as trade policy, foreign exchange regulations, taxation and business practices, and had served as a medium for the extraterritorial extension of the laws and policies of other Governments. Many representatives supported the proposal that the Commission should undertake an examination of the possible implications of the activities of multinational enterprises for international trade law. In this connexion, some representatives suggested that the Commission might appoint a small group of experts to study the question and to submit recommendations on how best to regulate the activities of those enterprises.

42. Several representatives stated that it would be premature for the Commission to be seized of the matter at this stage. It was observed that other United Nations organs and specialized agencies, such as the International Labour Organisation, the United Nations Conference on Trade and Development and the Economic and Social Council, had already commissioned studies on the social, economic and political aspects of the activities of multinational enterprises. Consequently, it was suggested that the Commission should await the results of those studies before considering the legal implications of the activities of multinational enterprises, thereby avoiding duplication and overlapping. In this connexion, several representatives agreed with the proposal that the Commission might, in the meantime, seek the views of Governments and interested international organizations on the legal problems presented by the different kinds of multinational enterprises and the implications thereof for the unification and harmonization of international trade law.

43. Some representatives were of the opinion that the legal implications involved in the activities of multinational enterprises were closely related to basic political and economic policies and doubted whether it was feasible for the Commission to prepare uniform rules on the subject.

44. Some representatives were of the opinion that, in planning its future work, the Commission should concern itself not only with technical legal rules, but also with the broad principles governing international trade in order to achieve a transformation in international trade relations that would accelerate the rate of economic growth of the developing countries. The view was also expressed that the Commission should direct its attention to the development of such rules and principles relating to international trade as would strengthen co-operation among all nations on the basis of equality and mutual advantage. It was also suggested that the Commission should systematically review its programme of work and concentrate its attention on the most urgent questions.

IV. VOTING

45. At its 1354th meeting, on 8 November, the Sixth Committee unanimously adopted the draft resolution on the report of the Commission on the work of its fifth session (A/C.6/L.861/Rev.1) (see para. 48 below, draft resolution I).

46. At the same meeting, the Sixth Committee, by a vote of 73 to 1, with 8 abstentions, adopted the draft resolution on the proposed international conference of plenipotentiaries on prescription (limitation) in the international sale of goods (A/C.6/L.864) (see para. 48 below, draft resolution II).

47. Explanations of vote were given before the voting by Brazil, Canada, France, Hungary, India, Jamaica, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania and Uruguay, and, after the voting, by the Netherlands.

V. RECOMMENDATIONS OF THE SIXTH COMMITTEE

48. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

DRAFT RESOLUTION I

Report of the United Nations Commission on International Trade Law

The General Assembly,

Having considered the report of the United Nations Commission on International Trade Law on the work of its fifth session, 5/

Recalling its resolution 2205 (XXI) of 17 December 1966 establishing the United Nations Commission on International Trade Law and defining the object and terms of reference of the Commission,

Further recalling its resolutions 2421 (XXIII) of 18 December 1968, 2502 (XXIV) of 12 November 1969, 2635 (XXV) of 12 November 1970 and 2766 (XXVI) of 17 November 1971 on the reports of the United Nations Commission on International Trade Law on the work of its first, second, third and fourth sessions,

Reaffirming its conviction that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would significantly contribute to universal economic co-operation among all peoples on a basis of equality and, thereby, to their well-being,

Bearing in mind that the Trade and Development Board, at its twelfth session, took note of the report of the United Nations Commission on International Trade Law, 6/

1. Takes note with appreciation of the report of the United Nations Commission on International Trade Law on the work of its fifth session;
2. Commends the United Nations Commission on International Trade Law for the progress made in its work and for its efforts to enhance the efficiency of its working methods;
3. Notes with satisfaction the completion of draft articles for a convention on prescription (limitation) in the international sale of goods; 7/

5/ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717).

6/ A/8715, para. 240.

7/ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17 (A/8717), para. 21.

4. Recommends that the United Nations Commission on International Trade Law should:

(a) Continue in its work to pay special attention to the topics to which it has decided to give priority, that is, the international sale of goods, international payments, international commercial arbitration and international legislation on shipping;

(b) Accelerate its work on training and assistance in the field of international trade law, with special regard to developing countries;

(c) Continue to collaborate with international organizations active in the field of international trade law;

(d) Continue to give special consideration to the interests of developing countries and to bear in mind the special problems of land-locked countries;

(e) Keep its programme of work and its working methods under constant review;

5. Invites the United Nations Commission on International Trade Law to seek from Governments and interested international organizations information relating to legal problems presented by the different kinds of multinational enterprises, and the implications thereof for the unification and harmonization of international trade law, and to consider, in the light of this information and the results of available studies, including those by the International Labour Organisation, the United Nations Conference on Trade and Development and the Economic and Social Council, what further steps would be appropriate in this regard;

6. Requests the Secretary-General to forward to the United Nations Commission on International Trade Law the records of the discussions at the twenty-seventh session of the General Assembly on the Commission's report on the work of its fifth session.

DRAFT RESOLUTION II

United Nations Conference on Prescription (Limitation)
in the International Sale of Goods

The General Assembly,

Having considered chapter II of the report of the United Nations Commission on International Trade Law on the work of its fifth session, 8/ which contains draft articles for a convention on prescription (limitation) in the international sale of goods,

Recalling its resolution 2205 (XXI) of 17 December 1966 establishing the United Nations Commission on International Trade Law and defining the object and terms of reference of the Commission,

Noting that at its fourth and fifth sessions, held in 1971 and 1972, the United Nations Commission on International Trade Law, in the light of observations and comments submitted by Governments, considered and revised provisional draft articles on prescription (limitation) in the international sale of goods that had been prepared by the Commission's Working Group on Time-Limits and Limitations (Prescription) in the International Sale of Goods, and that the Commission, at its fifth session, approved the draft articles as set forth in paragraph 21 of its report,

Bearing in mind that the United Nations Commission on International Trade Law at its fifth session recommended that the General Assembly should convene an international conference of plenipotentiaries to conclude, on the basis of the draft articles adopted by the Commission, a convention on prescription (limitation) in the international sale of goods, 9/

Convinced that conflicts and divergencies among the existing national rules governing prescription (limitation) in the international sale of goods constitute obstacles to the development of world trade and that the harmonization and unification of such rules would promote the flow of world trade,

1. Expresses its appreciation to the United Nations Commission on International Trade Law for its valuable work on prescription in the international sale of goods;

2. Decides that an international conference of plenipotentiaries shall be convened in 1974, at New York or at any other suitable place for which the Secretary-General receives an invitation, to consider the question of prescription (limitation) in the international sale of goods and to embody the results of its work in an international convention and such other instruments as it may deem appropriate;

8/ Ibid., Supplement No. 17 (A/8717).

9/ Ibid., para. 20.

Further decides to consider any other matters requiring decision in connexion with the conference at its twenty-eighth session and to include in the provisional agenda of that session an item entitled "United Nations Conference on Prescription (Limitation) in the International Sale of Goods";

4. Refers to the conference the draft articles contained in chapter II of the report of the United Nations Commission on International Trade Law on the work of its fifth session, together with the commentary thereon and the analytical compilation of comments and proposals to be prepared by the Secretary-General pursuant to the decision of the Commission, 9/ as the basis for consideration by the conference.
