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Chairman: Mr. K. Krishna RAO (India).

Organization of the work of the Committee

1. The Chairman suggested that, in the intervals of the debate on the next item on the Committee's agenda, entitled "Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations: report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States" (agenda item 87), which it was to take up at its next meeting, the Committee should consider the report of the Drafting Committee on Special Missions (A/C.6/L.728 and Add.1-4) (agenda item 85).

*It was so decided.*

AGENDA ITEM 88

Report of the United Nations Commission on International Trade Law on the work of its first session (continued) (A/7216; A/C.6/L.648 and Add.1, A/C.6/L.673)

2. Mr. LIANG (China) said that his delegation was very impressed by the rich content and bold conclusions of the report of the United Nations Commission on International Trade Law (A/7216) and by the Commission's proposals for its future work programme and methods. It was gratifying that the new body had been able to commence its task so soon after the election of its members.

3. His delegation had supported General Assembly resolution 2205 (XXI) establishing the Commission, and it approved the General Assembly's decision that the elected members of the Commission should be States, rather than individual experts as in the case of the International Law Commission. His delegation likewise approved the criterion of geographic distribution set forth in that resolution and the decision that the Commission's membership should reflect the principal economic and legal systems of the world, with due regard to the adequate representation of developed and developing countries.

4. Nevertheless, it was regrettable that in electing the members of the Commission, the General Assembly had neglected to ensure representation of the Chinese legal system as one of the principal legal systems of the world. The Chinese legal system—the heritage of 750 million people—had originated some 400 years before the birth of Christ, and the works of the most eminent Chinese lawyers, such as Lord Shang and Han Foi-Tzu, had been translated by Western scholars. In modern times, works of unquestionable importance had been published on Chinese law by jurists of international renown, such as Dean John Wigmore of Northwestern University, United States, and Professor Jean Escarra of the University of Paris. That the Chinese legal system was not represented in the Commission was a regrettable omission attributable only to ignorance.

5. The Commission's initial programme of work was much more extensive than that of the International Law Commission had been, but, in view of the number of other organizations active in the same field, should not be regarded as over-ambitious. Bearing in mind the previous work already done on the three topics selected for priority consideration, the task which the Commission had set itself was not an impossible one. Nevertheless, it was essential that the Commission should always remain a body of experts, as well as a body of government representatives. Especially when sessions were held at Headquarters, Governments tended, for reason of economy, to send members of their administrative staff as representatives to expert bodies. Such a practice would inevitably be detrimental to the quality of the Commission's work. The consistently high level maintained by the International Law Commission in its work was due to the presence in that Commission of a nucleus of experts who were either university professors or legal advisers to Governments. While the members of the International Law Commission were not subject to replacement, government representatives were always liable to be affected by political or other changes.

6. The task of harmonizing and unifying international law was not an easy one. Professor H. C. Gutteridge of Cambridge, writing shortly after the Second World War, had stressed that fact and had said that before undertaking any action, it was essential to explore the ground carefully and win over the various parties concerned.<sup>1/</sup> That observation bore a special relevance to the working methods of the United Nations Commission on International Trade Law. It was over-optimistic to hope that Governments would reply with alacrity to the questionnaire referred to on page 18 of the Commission's report. The slowness and re-

<sup>1/</sup> See H. C. Gutteridge, *Comparative Law* (Cambridge, University Press, 1946), chapter XII, p. 157.

luctance of Governments in ratifying international treaties had presented a major problem to the League of Nations and, more recently, had been the subject of a memorandum submitted by Mr. Roberto Ago to the International Law Commission at its twentieth session.<sup>2/</sup> In his book entitled The International Law Commission, Professor Herbert Briggs had noted that between 1947 and 1963 the International Law Commission had asked Governments for information concerning six branches of international law which it was attempting to codify and had requested comments on twelve drafts prepared by it. In no case had any Government replied to all the requests for information or comments; some had failed to make any reply, while others had shown interest in only a limited number of topics.<sup>3/</sup>

7. As Professor Gutteridge had pointed out in 1946, national pride was one of the psychological obstacles to the unification of law, since any change in a nation's domestic law might be taken as implying a defect in its traditional system.<sup>4/</sup> Similarly, Mr. Mario Matteucci, Secretary General of the International Institute for the Unification of Private Law (UNIDROIT), had said in 1957 that uniform law had not been formed and developed in accordance with a systematic plan but had been brought into being to deal with specific questions, in response to the practical needs of the interest groups concerned. Mr. Matteucci had added that the unification of certain branches of law was possible and sometimes easy in relations between federated States or States linked by historical, cultural or religious affinities and that the rapid advances of technology were daily creating new needs for the uniform regulation of the relations arising out of those advances. The unification of private law, including international trade law, thus depended to a large extent on the interests and needs of certain groups, and it was those groups which would promote action by Governments. Less should be expected from official government circles and more from business and trade circles.

8. His delegation supported in principle the proposal for the establishment of a register of organizations and a register of texts in the field of international trade law, which would undoubtedly be of value to the Commission and also to jurists and businessmen concerned with the topic. However, the Commission's recommendation required more careful study, particularly from the viewpoint of its financial implications. He wished, moreover, to register his delegation's strong protest at the omission of Chinese from the list of official languages in which the registers were to be published. Such an omission was inexplicable, since the resulting savings would be negligible and would not justify the denial of the right of Chinese-speaking peoples throughout the world to have access to such material in their own language, which, moreover, was one of the official languages of the United Nations.

9. Mr. FEDOROV (Union of Soviet Socialist Republics) said that the Commission's report attested to

<sup>2/</sup> A/CN.4/205.

<sup>3/</sup> See Herbert W. Briggs, The International Law Commission (Ithaca, New York, Cornell University Press, 1965), pp. 191 and 192.

<sup>4/</sup> See H. C. Gutteridge, Comparative Law (Cambridge, University Press, 1946), chapter XII, p. 158.

the importance of the work done at its first session and justified its establishment as a special United Nations organ to further the progressive harmonization and unification of the law of international trade. The Commission had done good and useful work, had already taken decisions on a large number of important questions, and had made a solid contribution to laying the groundwork for its future work.

10. His delegation agreed that the establishment of the Commission had marked the opening of a new and important chapter in the progressive harmonization and unification of international trade law and that the Commission, whose membership reflected the principal economic and legal systems of the world and the developed and developing countries, was the most suited for the purpose of eliminating divergencies between national legal systems which formed barriers to the development of international trade. Indeed, the establishment of the Commission was an important and timely event. In recent times, deficiencies in the field of the unification of international trade law had become very noticeable; progress in that field had been rather slow because of the difficulties of introducing changes into national legislation, and because generally only a small group of States had become parties to conventions on international trade questions. Moreover, the developing countries, for a number of reasons, had not yet participated actively in the harmonization and unification of international trade law. Co-ordination of and co-operation between the many formulating organizations concerned with international trade law were almost entirely lacking. The Commission should eliminate all such defects, and be the main co-ordinating and law-making international organ in the field of international trade law.

11. The initial period in the work of any international organization was of considerable importance, since in that period precedents were laid down, working methods were evolved, and the main direction was established. In that connexion, his delegation considered that the principles governing international trade relations and trade policies conducive to development, adopted by the United Nations Conference on Trade and Development at its first session,<sup>5/</sup> should be fully reflected in the Commission's work, and the necessary attention given to the legal aspects of non-discrimination in international trade, in the interests of all countries. Since the Commission comprised representatives of States with different social-economic systems, different levels of development, and different legal systems and historical traditions, its work should be based on careful regard for proposals submitted and respect for mutual interests. His delegation therefore supported the Commission's conclusion, set out in paragraph 18 of the report, that its decisions should as far as possible be reached by way of consensus, although in the appropriate circumstances decisions should be made by a vote.

12. Concerning the Commission's future work, despite the substantial positive contribution made at the first session, there had also been a number of defects.

<sup>5/</sup> See Proceedings of the United Nations Conference on Trade and Development, vol. I, Final Act and Report (United Nations publication, Sales No.: 64.II.B.11), p. 18.

It was unfortunate that the Commission had been unable to agree on a definition of the expression "international trade law". His delegation's view, as stated in the Commission itself, was that the Commission should not limit its work to the consideration of questions of private international law, for then it would not fully carry out its functions as a commission on international trade law and, most importantly, a significant number of the questions of international trade law which were of cardinal importance to all countries would lie outside its field of vision.

13. His delegation also regretted that the Commission had been unable to adopt a decision on such a seemingly simple question as that of the States to which the Secretariat should transmit the Commission's documents and inquiries related to the Commission's work. His delegation, in view of the universal character of the Commission's work, felt strongly that all Commission documents and inquiries from the Secretariat in connexion with its work should be transmitted to all States, whether or not they were Members of the United Nations or of its specialized agencies. The discriminatory approach adopted by the Commission on that question could only further complicate its work and do serious harm to the cause of the international economic co-operation of States.

14. According to the information received from the Secretariat, the establishment of the registers would entail in the first instance expenditures of more than \$100,000 (see A/C.6/L.648 and Add.1). Such large expenditures could hardly be considered justified without painstaking and thorough study of the question. His delegation would not wish, however, to underrate the significance of establishing those registers, which were important both for the Commission and for world public opinion. The proposal should not be rejected out of hand, but it would also be wrong to decide such matters without thorough consideration, and efforts must be made to find ways to reduce the estimated expenditures. Accordingly, his delegation supported the proposal that the question of the establishment of the registers should be given further careful study and that only thereafter should a final decision be taken.

15. Considering the views of other delegations and the recommendation of the United Nations Conference on Trade and Development that the Commission should study international shipping legislation, his delegation supported the Chilean proposal on that subject.

16. While the priority topics proposed by the Commission could be approved, his delegation wished to stress the desirability of including among those topics the question of the elimination of discrimination in laws affecting international trade.

17. Mr. GOBBI (Argentina) expressed his delegation's satisfaction with the form of the Commission's report on the work of its first session. A flexible approach to the selection of topics and priorities would contribute to the orderly organization of the Commission's work and allow attention to be paid to such important matters as the Chilean delegation's proposal concerning international shipping legislation.

18. The decision to deal first with the international sale of goods was sound, because that was a subject of undeniable importance and urgency. Inter-American drafts had been prepared on the matter, two by the Inter-American Juridical Committee and one by the Inter-American Council of Jurists. The Secretariat's report should refer to those initiatives rather than dwell excessively on other less fruitful efforts and seminars on the subject. The conclusions reached as a result of the inter-American work to which he had referred differed quite substantially, on such matters as the definition of a contract and transfer of risk, from those reached at the Hague Conference of 1964. In view, however, of the importance it attached to the work done at The Hague, the Inter-American Juridical Committee had decided to study that work further before pursuing the matter. Latin American experience with regard to the international sale of goods led to the conclusion that to make progress in that field would be to cover the major part of the work of unifying international trade law.

19. The general method of work adopted by the Commission appeared satisfactory and his delegation also welcomed the Commission's intention to work in close collaboration with the United Nations Conference on Trade and Development. There seemed to be general agreement on the need for a register of organizations and a register of texts. In the opinion of his delegation, however, all aspects, of the matter, particularly the economic aspect, should be carefully analyzed before a final decision was taken. As it had indicated at the first session of the Commission, Argentina attached importance to the question of training in international trade law; it therefore welcomed the Commission's decision on that matter.

20. In conclusion, he emphasized that the process of unification was difficult and that there were no grounds for hasty optimism. But that very fact should give the Commission an incentive for adopting a realistic approach and setting itself modest but specific goals. If it worked in that way, the Commission would achieve its objectives.

21. Mr. ANOLIN (Philippines) reminded members that his Government had endorsed General Assembly resolution 2205 (XXI). The Philippines, as a developing country, was interested in all matters connected with the development of world trade. It wished to expand its agricultural exports and build up its industries and therefore welcomed attempts to harmonize and unify international trade law.

22. Referring to the report under consideration, he said that the Commission should deal with the important question of international shipping legislation. It was necessary, too, that the Commission should work in close collaboration with other international bodies concerned with trade law and with the United Nations Conference on Trade and Development, so as to avoid unnecessary conflicts and duplication of work.

23. In view of the financial implications, Governments should be given more time to consider the question of the establishment of a register of organizations and a register of texts. There seemed little doubt, however, that such registers would eventually prove very useful.

24. His delegation approved the method of work adopted by the Commission and the decision to give priority attention to the international sale of goods, international payments and international commercial arbitration. It was satisfied with the progress made by the Commission at its first session and hoped that subsequent sessions would be equally successful.

25. Mr. SIYOLWE (Zambia) said that, by harmonizing and unifying trade law, the Commission would serve the cause of international peace and security. The fact that the world's principal economic and legal systems were represented on the Commission meant that the interests of the entire international community of the United Nations would be properly served.

26. The Commission was to be commended on the list of priorities it had established and on having decided to concentrate in the first place on such important but controversial matters as the international sale of goods, international payments and international commercial arbitration.

27. The establishment of a register of organizations and a register of texts would assist the Commission in its work. Like other developing countries, Zambia attached importance to the training of experts in international trade law and it welcomed the Commission's decision to adopt the Indian proposal that a working group be established to examine Governments' comments on the priority topics selected, to consider the progress made in the work programme and to make appropriate proposals or recommendations to the Commission at its second session (see A/7216, para. 52).

28. Mr. ULVESETH (Norway) said that international trade was a decisive factor in Norway's economy and Norway regarded the United Nations Commission on International Trade Laws as a very important organ for the promotion of trade and economic co-operation for the benefit of all countries. His delegation fully endorsed the appeal of the Chairman of the Commission to Governments to do their utmost to assist the Commission in fulfilling the complicated task entrusted to it. Norway, for its part, had transmitted to the Secretary-General, upon request, a study concerning time-limits and limitations (prescription) in the field of international sale of goods.

29. The Commission's ability to eliminate divergencies between national legal systems which formed barriers to the development of international trade would depend upon the juridical skill of its members and upon the attitude and goodwill of Member States. To judge from the Commission's report and the good start it had made in its work, the future was promising, but the Commission's task was of great complexity and there were many conflicting interests involved. It was therefore of the utmost importance that the principle of consensus should continue to be respected in the Commission in every matter of major importance. The Commission should also maintain close collaboration with the specialized agencies and the intergovernmental and non-governmental organizations concerned with the harmonization and unification of international trade law, and its work should be confined to legal matters in the field of private international law and should be complementary to the efforts that had been and were being made by such organizations.

30. The Commission's report and recommendations were acceptable to his delegation. The three priority topics were a suitable working programme which would fill the Commission's time during its first years. His delegation also saw great merit in the establishment as soon as possible of a register of organizations and a register of texts.

31. International shipping legislation covered vast and highly specialized fields of great complexity. Through the efforts of generations there had been established régimes of conventional rules, which were periodically revised by the competent international organizations open to all countries. Under those circumstances it might be wise not to burden the Commission's programme with legal work on maritime problems, but if it was the Sixth Committee's wish that certain aspects of those problems should be taken up by the Commission, his Government would not oppose such a move. However, his delegation would then strongly recommend that close co-operation should be established by the Commission with, among others, the Legal Committee of the Inter-Governmental Maritime Consultative Organization, which had recently adopted a resolution indicating its desire to co-operate in the legal work in maritime being undertaken within the United Nations system.

*The meeting rose at 12.30 p.m.*