



UNITED NATIONS

GENERAL ASSEMBLY



Distr. GENERAL

A/7408

13 December 1968

ENGLISH

ORIGINAL: ENGLISH/FRENCH

Twenty-third session
Agenda item 88

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

Report of the Sixth Committee

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I. INTRODUCTION

1. At its 1676th plenary meeting, on 27 September 1968, the General Assembly included as item 88 of the agenda of its twenty-third session, and allocated to the Sixth Committee, the item entitled "Report of the United Nations Commission on International Trade Law on the work of its first session".^{1/}
2. The Sixth Committee considered this item at its 1082nd to 1085th meetings, held from 27 November to 3 December 1968 and at its 1096th and 1097th meetings, held on 13 and 14 December 1968.
3. At the 1082nd meeting, on 27 November 1968, Mr. Emmanuel Kodjoe Dadzie, Chairman of the first session of the United Nations Commission on International Trade Law (UNCITRAL), at the invitation of the Chairman, introduced UNCITRAL's report on the work of that session. At the 1096th meeting, on 13 December 1968, after hearing a statement by the representative of the Secretary-General on the financial implications, the Committee decided that in the future the annual report of UNCITRAL should be introduced to the General Assembly by the Chairman of UNCITRAL, or by another officer to be designated by him.
4. At the 1097th meeting, on 14 December 1968, the Rapporteur of the Sixth Committee raised the question whether the Committee wished to include in its report to the General Assembly a summary of the views expressed during the debate on agenda item 88. After referring to paragraph (f) of the annex to General Assembly resolution 2292 (XXII), 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-matter, the report on agenda item 88 should include a summary of the representative trends of opinion and not of the individual views of all delegations.
5. The report of UNCITRAL on the work of its first session, which was before the Sixth Committee, is divided into seven chapters as follows:
 - I. Establishment and terms of reference of the Commission;
 - II. Organization of the first session;
 - III. General debate;
 - IV. Programme of work of the Commission;

^{1/} Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216).

- V. Establishment within the Secretariat of a register of organizations and a register of texts;
- VI. Training and assistance in the field of international trade law; and
- VII. Other decisions and conclusions of the Commission.

II. PROPOSALS

6. At the 1096th meeting, on 13 December 1968, the representative of Ghana introduced a draft resolution sponsored by Argentina, Cameroon, Chile, Congo (Democratic Republic of), Ghana, Hungary, India, Japan, Netherlands, Nigeria, Pakistan, Romania, Spain, Syria, United Arab Republic, United Kingdom, United Republic of Tanzania and Zambia (A/C.6/L.738/Rev.1 and Add.1, 2 and 3), which read as follows:

"The General Assembly,

"Having considered the report of the United Nations Commission on International Trade Law (UNCITRAL) on the work of its first session, 2/

"Recalling its resolution 2205 (XXI) by which it established UNCITRAL and defined its object and terms of reference,

"Noting the report of the seventh session of the Trade and Development Board concerning the report of UNCITRAL on the work of its first session, 3/ and noting further that the Board expressed its appreciation for the report of UNCITRAL and commended UNCITRAL for its programme of work,

"Endorsing the statement of the Trade and Development Board^{4/} emphasizing that the needs of developing countries should receive adequate attention in the programme of work of UNCITRAL and stressing the importance of co-operation between UNCTAD and UNCITRAL at the intergovernmental and secretarial levels,

"Bearing in mind the wish expressed by many members of the Trade and Development Board at its seventh session that UNCITRAL should add international shipping legislation to its list of priority topics, 5/ and bearing also in mind the activities of other agencies active in this field,

2/ Ibid.

3/ Ibid., Supplement No. 14 (A/7214), part 2, chapter VII, paras. 155-165.

4/ Ibid., para. 165.

5/ Ibid., chapter II, para. 74.

"Noting with satisfaction that UNCITRAL intends to carry out its work in co-operation with organs and organizations concerned with the progressive harmonization and unification of international trade law, and that such co-operation has already been initiated,

"Convinced that harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, would significantly contribute to economic co-operation between countries and, thereby, to their well-being,

"Having considered the report of the Secretary-General concerning the financial and administrative implications of the establishment of a register of organizations and a register of texts in the field of international trade law, 6/

"1. Takes note with appreciation of the report of UNCITRAL on the work of its first session;

"2. Notes with approval the programme of work established by UNCITRAL;

"3. Authorizes the Secretary-General to establish a register of organizations in accordance with directives laid down by UNCITRAL;

"4. Approves in principle the proposal to establish a register of the international instruments and other documents referred to in chapter V of the report of UNCITRAL, and requests that UNCITRAL should consider further at its second session the precise nature and scope of such register in the light of the report of the Secretary-General 7/ and the discussions at the twenty-third session of the General Assembly on the registers;

"5. Authorizes the Secretary-General to establish the register referred to in the preceding paragraph in accordance with the further directives to be given by UNCITRAL at its second session;

"6. Recommends that UNCITRAL should:

(a) Continue its work on the topics to which UNCITRAL decided to give priority, i.e., the international sale of goods, international payments and international commercial arbitration;

(b) Consider the inclusion of international shipping legislation among the priority topics in its work programme;

6/ A/C.6/L.648 and Add.1.

7/ Ibid.

(c) Consider opportunities for training and assistance in the field of international trade law in the light of relevant reports of the Secretary-General;

(d) Keep its programme of work under constant review, bearing in mind the interests of all peoples, and particularly those of the developing countries, in the extensive development of international trade;

(e) Consider at its second session ways and means to promote co-ordination of the work of organizations active in the progressive harmonization and unification of international trade law and to encourage co-operation among them;

(f) Consider, when appropriate, the possibility of issuing a Yearbook which would make its work more widely known and more readily available;

"7. Requests the Secretary-General to forward to UNCITRAL the records of the discussions at the twenty-third session of the General Assembly on the report of UNCITRAL."

III. DEBATE

7. The main trends of the Sixth Committee's debate on agenda item 88 are summarized in the following seven sections. The first section concerns the observations which were made on the role and the work of UNCITRAL in general. The other six sections contain a summary of the observations relating more particularly to the report of UNCITRAL on the work of its first session and are set out under the following headings: programme of work of UNCITRAL, international shipping legislation, establishment within the Secretariat of a register of organizations and a register of texts, training and assistance in the field of international trade law, collaboration with other organizations, and publication of a Yearbook.

A. The role and the work of UNCITRAL in general

8. Several representatives characterized UNCITRAL as the principal organ responsible for the progressive development of international trade law and for the co-ordination of the unificatory activities of other governmental and non-governmental organizations. Some of those representatives expressed the opinion that the task of UNCITRAL should not be merely to encourage and co-ordinate work

carried out elsewhere, but also to undertake work of its own in order to reduce and remove legal obstacles to the flow of international trade. In doing so, UNCITRAL should ensure the full participation of developing countries which, until now, had not taken an active part in the development and formulation of international trade law.

9. Many representatives commended UNCITRAL for having obtained tangible results during its first session. It was noted with approval that UNCITRAL had decided to take its decisions as far as possible by consensus. This would permit UNCITRAL, whose members were States with different social-economic systems, different levels of development, and different legal systems and historical traditions, to base its work on careful regard for proposals submitted and respect for mutual interests. Some representatives, while agreeing with the principle of consensus, nevertheless observed that consensus should not be ensured at all costs as if this were the essential objective of UNCITRAL's discussions, nor should its purpose be merely to satisfy a dissident minority. In appropriate circumstances, decisions should be made by vote.

10. A number of representatives stressed the importance of Governments doing their utmost to support UNCITRAL in its work, inter alia, by responding promptly to requests for information and comments on topics on its agenda and by seeing to it that UNCITRAL remained foremost a body of experts. The view was expressed that UNCITRAL should also have invited States other than the members of UNCITRAL to submit studies on certain subjects so as to enable it to work on a sufficiently broad basis. According to another view, owing to the universal character of UNCITRAL's work, documents and inquiries emanating from UNCITRAL should be transmitted to all States, whether or not they were Members of the United Nations or members of its specialized agencies.

11. One representative observed that, in electing the members of UNCITRAL, the General Assembly had regrettably neglected to ensure representation of the Chinese legal system.

12. A number of representatives expressed agreement with the fact that UNCITRAL had not felt it necessary, at this stage of its work, to formulate a definition of international trade law and were of the opinion that UNCITRAL had acted wisely in taking practical considerations into account when drawing up its programme. It was observed, however, that it was unfortunate that UNCITRAL had been unable to

agree on a definition of international trade law; UNCITRAL should not limit its work to the consideration only of questions of private law, since a significant number of the questions of international trade law which were of cardinal importance to all countries would then lie outside its field of activity.

13. Some representatives stressed the particular importance of UNCITRAL's work for the developing countries. That work should fully reflect the principles governing international trade relations and trade practices adopted at the first United Nations Conference on Trade and Development. Other representatives, however, emphasized the community of interest which both developed and developing countries had in the work of UNCITRAL and cautioned against introducing into that work notions of a dichotomy of interest drawn from related but different contexts.

B. Programme of work of UNCITRAL

14. Most representatives commended UNCITRAL for its selection of priority topics, which covered three important fields of international trade law, i.e., the international sale of goods, international payments and international commercial arbitration. Some representatives expressed the wish that UNCITRAL maintain a certain degree of flexibility in its programme of work, which should be revised from time to time to meet the requirements of the international community.

15. One representative questioned the choice of international commercial arbitration as a priority topic and deemed it preferable first to make a census of existing international instruments on the subject. It was also observed that UNCITRAL could derive great advantage from the establishment of a collection of important arbitral awards handed down in the field of international trade.

16. The suggestion was made that other items should also be considered by UNCITRAL, such as the question of the most-favoured-nation clause, the promotion of the Convention on Transit Trade of Land-locked States and, as a matter of priority, the elimination of discrimination in laws affecting international trade. However, some representatives, referring to the political implications which the consideration of the question of discrimination in laws affecting international trade might possibly involve, questioned the expediency of suggesting to UNCITRAL that it should take up that item.

C. International shipping legislation

17. With regard to international shipping legislation, reference was made to the recommendation made by many members of the Trade and Development Board at its seventh session to the effect that UNCITRAL should take the necessary measures to deal, as a matter of priority, with international shipping legislation.^{8/} Most of the representatives who spoke on this subject favoured an active involvement on the part of UNCITRAL and said that they would welcome the inclusion of shipping legislation among the priority items. Some representatives, while agreeing that UNCITRAL should consider the law of shipping, deemed it nevertheless advisable for UNCITRAL to defer its work on that subject until the Committee on Shipping of the Trade and Development Board had considered the scope of international shipping legislation and made its recommendations to UNCITRAL. Other representatives drew attention to the activities of the United Nations Conference on Trade and Development (UNCTAD) and the Intergovernmental Maritime Consultative Committee (IMCO) in the matter of international shipping legislation and emphasized, in this connexion, that it was of increasing importance that UNCITRAL should co-ordinate the various efforts made in this field so as to avoid, as far as possible, duplication of work.

D. Establishment within the Secretariat of a register of organizations and a register of texts

18. There was general recognition of the importance of a register of organizations, containing a survey of their activities, and a register of international instruments in certain fields of international trade law. The view was expressed that this would permit UNCITRAL to keep abreast of the latest developments and collect the information necessary for its work. It was also stated that such registers would no doubt be useful to Governments and other organizations. Several representatives, however, expressed their hesitations in view of the financial implications and were of the opinion that UNCITRAL should further consider the scope of the register of texts at its second session, taking into account the report of the Secretary-General

^{8/} Official Records of the General Assembly, Twenty-third Session, Supplement No. 14 (A/7214), part two, chapter II, para. 74. See also A/C.6/L.673.

on the financial and administrative implications of the registers^{9/} and the observations made thereon during the debates in the Sixth Committee. Some representatives were of the opinion that the aim pursued by UNCITRAL could perhaps also be achieved by other means, such as by publishing a list of the titles and sources of the various instruments and documents, without reproducing the texts thereof. One representative entered a strong protest at the omission of Chinese from the list of official languages in which the registers were to be published.

E. Training and assistance in the field of international trade law

19. Many representatives supported UNCITRAL's proposals concerning training and assistance in the field of international trade law. It was noted with approval that the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law had recommended that an appropriate place should be given to the activities concerning international trade law within the framework of the activities conducted under the Programme. It was suggested that UNCITRAL, at its second session, should give careful consideration to training and assistance in international trade law on the basis of the report to be submitted by the Secretary-General. Some representatives urged that UNCITRAL should take suitable steps to increase the opportunities for training experts, particularly in the developing countries, and to place at the disposal of the international community the juridical means of stimulating trade.

F. Collaboration with other organizations

20. A number of representatives referred to the problem of the waste of effort and confusion caused by the existence of competing agencies in the work of unification. It was stressed, in this connexion, that the remedy would seem to lie in UNCITRAL's functioning as a rallying-ground for unificatory activities and in the co-ordination and supervision by UNCITRAL of such activities. Some representatives stressed that UNCITRAL should be the main co-ordinating and law-making international organ in the field of international trade law and that it should maintain close co-operation with the specialized agencies and the intergovernmental and non-governmental organizations concerned. Other representatives emphasized that the work of UNCITRAL should be complementary to the efforts that had been made and

^{9/} A/C.6/L.648 and Add.1.

were being made by such organizations and that stimulating wider interest in, and particular work by, existing institutions was among the significant contributions that UNCITRAL could make.

G. Yearbook

21. Several representatives deemed it desirable that UNCITRAL should issue a Yearbook similar to that of the International Law Commission. Most representatives, however, agreed that there was no need for the Sixth Committee to take a decision on the matter at this time and that it was for UNCITRAL to determine the desirability of such a step.

IV. VOTING

22. At the 1097th meeting, held on 14 December 1968, it was decided, at the request of some representatives, to vote separately on paragraphs 4 and 5 of the draft resolution (A/C.6/L.738/Rev.1 and Add.1, 2 and 3). Paragraph 4 was adopted by 70 votes to 1, with 8 abstentions. Paragraph 5 was adopted by 64 votes to 4, with 16 abstentions. The draft resolution as a whole was adopted by 77 votes to none, with 2 abstentions. Explanations of votes were given by the representatives of Australia, Bulgaria, Canada, China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

V. RECOMMENDATION OF THE SIXTH COMMITTEE

23. The Sixth Committee therefore recommends to the General Assembly the adoption of the following draft resolution:

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 first session,^{10/}

^{10/} Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216).

Recalling its resolution 2205 (XXI) of 16 December 1966 by which it established the United Nations Commission on International Trade Law and defined its object and terms of reference,

Noting the report of the seventh session of the Trade and Development Board concerning the report of the United Nations Commission on International Trade Law on the work of its first session,^{11/} and noting further that the Board expressed its appreciation of the Commission's report and commended the Commission for its programme of work,

Endorsing the statement of the Trade and Development Board^{12/} emphasizing that the needs of developing countries should receive adequate attention in the programme of work of the United Nations Commission on International Trade Law and stressing the importance of co-operation between the United Nations Conference on Trade and Development and the Commission at the inter-governmental and secretarial levels,

Bearing in mind the wish expressed by many members of the Trade and Development Board at its seventh session that the United Nations Commission on International Trade Law should add international shipping legislation to its list of priority topics,^{13/} and bearing also in mind the activities of other agencies active in this field,

Noting with satisfaction that the United Nations Commission on International Trade Law intends to carry out its work in co-operation with organs and organizations concerned with the progressive harmonization and unification of international trade law, and that such co-operation has already been initiated,

Convinced that harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, would significantly contribute to economic co-operation between countries and, thereby, to their well-being,

Having considered the report of the Secretary-General concerning the financial and administrative implications of the establishment of a register of organizations and a register of texts in the field of international trade law,^{14/}

^{11/} Ibid., Supplement No. 14 (A/7214), part 2, chapter VII, paras. 155-165.

^{12/} Ibid., para. 165.

^{13/} Ibid., chapter II, para. 74.

^{14/} A/C.6/L.648 and Add.1.

1. Takes note with appreciation of the report of the United Nations Commission on International Trade Law on the work of its first session;
2. Notes with approval the programme of work established by the United Nations Commission on International Trade Law;
3. Authorizes the Secretary-General to establish a register of organizations in accordance with directives laid down by the United Nations Commission on International Trade Law;
4. Approves in principle the proposal to establish a register of the international instruments and other documents referred to in chapter V of the report of the United Nations Commission on International Trade Law, and requests that the Commission should consider further at its second session the precise nature and scope of such a register in the light of the report of the Secretary-General^{15/} and the discussions at the twenty-third session of the General Assembly on the registers;
5. Authorizes the Secretary-General to establish the register referred to in paragraph 4 above in accordance with the further directives to be given by the United Nations Commission on International Trade Law at its second session;
6. Recommends that the United Nations Commission on International Trade Law should:
 - (a) Continue its work on the topics to which it decided to give priority, i.e., the international sale of goods, international payments and international commercial arbitration;
 - (b) Consider the inclusion of international shipping legislation among the priority topics in its work programme;
 - (c) Consider opportunities for training and assistance in the field of international trade law in the light of relevant reports of the Secretary-General;
 - (d) Keep its programme of work under constant review, bearing in mind the interests of all peoples, and particularly those of the developing countries, in the extensive development of international trade;
 - (e) Consider at its second session ways and means of promoting co-ordination of the work of organizations active in the progressive harmonization and unification of international trade law and to encourage co-operation among them;

^{15/} Ibid.

(f) Consider, when appropriate, the possibility of issuing a Yearbook which would make its work more widely known and more readily available;

7. Requests the Secretary-General to forward to the United Nations Commission on International Trade Law the records of the discussions at the twenty-third session of the General Assembly on the Commission's report.
