

79. His Government welcomed the projects aimed at unification in the field of international payments. It also welcomed the work of the Commission's Working Group on International Legislation on Shipping; it was in keeping with the requirements of the large-scale development and extension of international maritime transport. It therefore supported the Commission's decision that the Working Group should continue and complete its work expeditiously.

80. With regard to international commercial arbitration, the unification of the various arbitration rules seemed desirable. In that connexion, the progress

achieved in the preparation of uniform rules for the arbitration courts in the States members of the Council for Mutual Economic Assistance had to be taken into account. His delegation felt that the Commission should also take into consideration the Convention on the settlement by arbitration of disputes resulting from economic, scientific and technical co-operation signed by the member States of that Council in 1972.

81. He said that the German Democratic Republic was ready to co-operate in the unification of international trade law.

The meeting rose at 5.55 p.m.

1427th meeting

Wednesday, 31 October 1973, at 3.25 p.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1427

In the absence of the Chairman, Mr. Shitta-Bey (Nigeria), Vice-Chairman, took the Chair.

Replacement of the Rapporteur of the Committee

1. The CHAIRMAN informed the Committee that the Permanent Representative of the Central African Republic to the United Nations had informed the Secretary-General that Mr. Joseph Mande-Djapou, Rapporteur of the Sixth Committee, was seriously ill and had been replaced on the delegation by Mr. Simon Bozanga. If he heard no objection, he would take it that the Committee agreed that Mr. Bozanga should serve as Rapporteur in place of Mr. Mande-Djapou.

It was so decided.

AGENDA ITEM 92

Report of the United Nations Commission on International Trade Law on the work of its sixth session (continued) (A/9017, A/C.6/L.901)

2. Mr. JEANNEL (France) said it was essential that the usefulness of the work of the United Nations Commission on International Trade Law should be acknowledged by a large number of States representing different legal systems. Its recommendations must therefore represent compromises that would be acceptable to a large majority. The Secretariat could be of great assistance in that task.

3. He noted in the report of the Commission (A/9017) that it had not taken a substantive decision on the uniform rules governing the international sale of goods because the Working Group was still dealing with the matter and at its next session would examine articles 71 and 81 of the Uniform Law on the International Sale of Goods (ULIS) annexed to the Convention of The Hague of 1964,¹ on the basis of proposals it had submitted to the Commission at its fifth session. Those proposals should help to improve the text of ULIS and encourage more States to accede to it.

4. The Secretary-General had prepared a study for the Commission on the feasibility of developing general conditions of sale for a large number of products.² His delegation doubted whether it was advisable for the Commission to undertake such a project, which conflicted, or at least overlapped, with the work on ULIS and some of the general conditions drawn up by the United Nations regional economic commissions, particularly the Economic Commission for Europe. Furthermore, it was very difficult to draw up "global" or "uniform" general conditions that could be applied almost universally to any product.

5. Turning to the question of international payments, he pointed out that the existing conventions on the matter had been ratified by only a few States. The Secretary-General's inquiry had shown that the banking profession had organized itself quite adequately and that there was no pressing need for a new text. His delegation was opposed to the preparation of a new convention by the Commission and reiterated its reservations regarding the all-too-frequent practice of creating working groups to deal with problems under consideration by the Commission.

6. The draft Uniform Law on International Bills of Exchange (A/CN.9/67)³ contained an excessive number of concepts and terms taken from Anglo-Saxon law. If the final draft was to be applicable throughout the world, it must maintain a fair balance between the main legal systems. There was, however, a positive aspect to the work of the Commission on international payments: it had developed very satisfactory co-operative relations with various international organizations.

7. His delegation approved the Commission's decision (*ibid.*, para. 61) to continue its work of updating existing rules and practices on shipping, particularly the International Convention for the Unification of Certain

² A/CN.9/78.

³ See *Yearbook of the United Nations Commission on International Trade Law*, vol. III: 1972 (United Nations publication, Sales No. E.73.V.6), p. 145.

¹ See *Register of Texts of Conventions and Other Instruments Concerning International Trade Law*, vol. I (United Nations publication, Sales No. E.71.V.3), p. 39.

Rules of Law relating to Bills of Lading of 1924 and the Protocol of 1968 to that Convention, both signed at Brussels. However, he did not think that the Commission itself should draft a new convention to replace the Brussels Convention.

8. With regard to international commercial arbitration, his delegation believed that there were enough international instruments on the subject to make it unnecessary to propose any new ones. Co-operation among arbitration organizations should be left to the organizations themselves, and the Commission should neither promote nor sponsor the creation of an international organization. He supported the Commission's decision to carry out some of the Special Rapporteur's recommendations, in particular its request that the General Assembly and the Economic Commission for Europe should invite States to accede to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and the European Convention on International Commercial Arbitration of 1961.

9. The Commission should work in close co-operation with other competent organizations, particularly the United Nations Institute for Training and Research, the Inter-Governmental Maritime Consultative Organization and the United Nations Conference on Trade and Development, on training and assistance in the field of international trade law. His delegation supported the efforts made by those organizations and stressed the importance of designing assistance programmes along practical lines.

10. His delegation agreed with the Commission's decision to request the Secretary-General to draw up a questionnaire designed to obtain information concerning legal problems presented by multinational enterprises. Such information would not be of much use, however, until the studies undertaken by UNCTAD, the Economic and Social Council and the International Labour Organisation were sufficiently advanced and until the general problems presented by multinational enterprises were defined.

11. His delegation attached particular importance to its proposal for the establishment of a union for *jus commune* in matters of international trade.⁴ As a result of the various contacts it had made, it had reached the conclusion that at the present stage of international relations and international trade the proposal might perhaps be premature, although it dealt with a real problem and should be borne in mind as an objective to be achieved in the future. There was an urgent need to find a way of accelerating the process by which conventions could be applied in practice. The Commission had decided at its sixth session to request the Secretary-General to prepare a report examining the causes of delay in ratification of or adherence to international conventions concerning international trade law. He felt it was essential that the report should be submitted to the seventh session of the Commission and urged the Secretariat to expedite its work on the matter.

12. Mr. CASTRÉN (Finland) said his delegation noted with special satisfaction that one of the priority

⁴ *Ibid.*, vol. II: 1971 (United Nations publication, Sales No. E.72.V.4), p. 139.

topics taken up by the Commission had already resulted in a draft convention on prescription (limitation) in the international sale of goods⁵ which provided a good basis for a successful diplomatic conference. It was to be hoped that the forthcoming Conference on prescription (limitation) would be the first in a series of United Nations conferences resulting in new conventions on international trade law.

13. His country would follow with great interest the work being done on the question of multinational enterprises. He drew attention to the fact that other organizations, such as UNCTAD, the Economic and Social Council, and the ILO were also concerned with the matter. It would be desirable for Governments replying to the questionnaire which was to be prepared by the Secretary-General at the Commission's request to comment on the problem of avoiding duplication in the work being carried out by the various organizations on the matter.

14. The question of establishing a union for *jus commune* was worth careful study. The decision of the Commission to request a report examining the causes of delay in ratification of or adherence to international conventions and the means of accelerating such ratification or adherence could provide a basis for further deliberations on the subject.

15. His delegation supported the Commission's decision to organize an international symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law. The Commission might eventually consider the possibility of arranging seminars in the developing countries, since that would probably reduce the costs and make the seminars available to a greater number of participants.

16. Mr. NJENGA (Kenya) said that Kenya was one of the original members of the Commission, and its membership expired at the end of 1973. Its candidature for re-election had received the endorsement of the African countries at the recent summit conference of the Organization of African Unity in Addis Ababa. As a developing country, Kenya fully appreciated the necessity for eliminating all barriers to a free flow of international trade. It was because of that awareness that his Government had played and was prepared to continue to play an active role in the work of the Commission.

17. With regard to the Commission's method of work, Kenya felt that it should continue to make use of working groups, and whenever possible interested international organizations and experts. Most of the Commission's work was actively done by the working groups, and future reports should more faithfully reflect that fact.

18. His delegation looked forward to participating in the forthcoming Conference on prescription (limitation), but believed that the dates should be re-examined and perhaps changed so as to facilitate the holding of the third Conference on the law of the sea between May and July. The latter was of much longer duration

⁵ See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17*, para. 21.

and the former could easily be accommodated either before or after it. A change might simplify the work of the Secretariat.

19. He noted with appreciation the commendable work done by the Working Group on the International Sale of Goods. His Government believed that the Conventions of The Hague and other international instruments relating to international trade should be reviewed so as to ensure that they sufficiently took into account the particular needs of the developing countries.

20. His delegation had welcomed the establishment during the Commission's fourth session of a Working Group on International Negotiable Instruments. His delegation urged the Secretariat to carry out its inquiries regarding the use of cheques in international payment transactions expeditiously, since it believed that the problems concerning international payments could not be satisfactorily solved unless the question of international cheques was also considered.

21. The same was true of bankers' commercial credits. The "Uniform Customs and Practice for Documentary Credits" drawn up by the International Chamber of Commerce in 1933 and revised in 1951 and 1962⁶ required review so as to take into account the changes that had taken place in international trade with particular reference to the new methods of payment and communication. Kenyan authorities in the field had been and would continue to be involved in the proposed revision of "Uniform Customs". His delegation therefore supported the Commission's invitation to ICC to submit to it progress reports in respect of its revision of "Uniform Customs" and of its work on contract and payment guarantees, as well as the proposed revised text of "Uniform Customs" and the draft uniform rules on contract and payment guarantees before their final adoption by the ICC.

22. He noted with satisfaction the progress made by the Working Group on International Legislation on Shipping. Since the bulk of the Commission's work in that area was entrusted to the Working Group, its membership should be as representative as possible. Furthermore, to ensure that the Working Group's findings would be accepted by the Commission with as little difficulty as possible, those members of the Commission not represented in the Working Group should be encouraged to attend its sessions and to participate in its deliberations as observers. Kenya had already done so, and if re-elected to the Commission, would continue to do so.

23. His delegation welcomed the Commission's recommendation that the General Assembly should encourage participation by as many States as possible in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Kenya was not a party to the Convention, but was studying its provisions with a view to acceding to it. His country reserved its position, however, on the question of promoting ratification of or accession to arbitral conventions essentially of a regional character. Accordingly, it supported the Commission's request to the Secretary-General to

prepare a draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade; and it commended the Special Rapporteur for his excellent work.

24. His delegation whole-heartedly supported the practice of allocating fellowships of the United Nations Institute for Training and Research to candidates who had special interest in international trade law and commended those countries that had reacted favourably to the Secretary-General's request that they provide internships for nationals from developing countries. It was to be hoped that other developed countries would do likewise.

25. His delegation attached great importance to the decision by the Commission to organize an international symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law. He hoped that Governments, international organizations and foundations would react favourably to the Secretary-General's request for funds to enable nationals from developing countries to participate in the symposium. If it was to be useful, the symposium should last a minimum of five days, and the lecturers should be drawn from various regions and include experts from developing countries.

26. With regard to the Commission's examination of problems presented by multinational enterprises, his delegation did not think there was too much danger of duplication with work being carried out by other bodies, which were concerned with other aspects of the subject. There was no point at the present stage in engaging in a sterile debate as to the legal definition of the term "multinational corporation", since the phenomenon existed and presented a very real threat. The Secretary-General, in his questionnaire, had acted correctly by using the term in its broad sense. His delegation welcomed the Commission's decision to request the preparation of the questionnaire and would co-operate fully in that regard.

27. Turning to the enterprising French proposal for the establishment of a union for *jus commune*, he said he felt it would not be advisable to establish a working party on the subject at present. His delegation could not support a proposal whereby States would be deemed to have consented to general conventions by their silence, particularly when they had not been involved in the framing of such conventions. It therefore supported in principle the Commission's decision to request the Secretary-General to prepare a report examining the causes of delay in ratification of or adherence to international conventions concerning international trade law. More widespread and speedier action on such conventions of a truly international character would enable the international community to progress considerably towards a unified international trade law. Before that could be achieved, however, genuinely international trade law must be developed, and that was the goal for which the Commission had been established, although it was far from being attained.

28. Mr. MOTZFELDT (Norway) congratulated the Commission on the considerable progress made at its sixth session and expressed his delegation's appreciation

⁶ See *Register of Texts of Conventions and Other Instruments Concerning International Trade Law*, vol. I (United Nations publication, Sales No. E.71.V.3), p. 229.

to its Vice-Chairman for his very clear introduction of its report.

29. The harmonization and unification of international trade law was of special importance to Norway, which had perhaps the highest foreign trade *per capita* in the world and was the carrier of goods between most countries.

30. Norway had had the opportunity to state its views during the Commission's session and had submitted written comments on the draft convention on prescription (limitation) in the international sale of goods and on matters relating to international legislation on shipping. He would therefore confine his remarks to the future work of the Commission. In that connexion, his delegation would like to propose a new item to be included in its priority work programme, namely, harmonization of the law on producers' civil liability for damage caused by their products intended for or involved in international distribution, with a view to the elaboration of a draft convention on that topic as soon as possible.

31. In recent decades, the civil liability of producers for damage caused by their products had become a subject of increasing importance. That question—or questions related to it—had for many years been discussed in connexion with the law on sale, under the head of liability for dangerous defects or qualities. In the law on sale, the interest had been focused on relations between seller and buyer. Modern technology, in connexion with mass production and new means of distribution, seemed to call for new solutions. Not only had the consequences of dangerous qualities of manufactured products increased immensely, but such qualities also appeared in new forms which differed from the classic examples of dangerous defects. Moreover, problems arose that were not necessarily, or even typically, linked to the contract between seller and buyer. Very often the direct seller had no influence on the production or on the product. The victim might be an innocent bystander, either independent of the buyer or a member of his household. In many cases, the victim would find it most convenient and natural to claim damages—independently of any contract—from the producer or another person in the commercial chain of preparation or distribution of the product, rather than from the last seller.

32. The growing interest in the problems of products liability was reflected not only in legal science and doctrine, but also in legislative activities and in jurisprudence. A number of more or less sensational law suits, particularly in the area of food, feed, pharmacy, medicine and drugs had been reported and had aroused public interest and concern.

33. Legislative action on the topic, outside the field of the law on sales, was in most countries still in the preparatory or initial stages. Within the Council of Europe, an Expert Committee, appointed in 1972, was preparing a draft uniform law—or convention—with a view to harmonizing the law in member States on civil liability of producers for damage caused by their products. In that connexion, the International Institute for the Unification of Private Law (UNID-ROIT) had prepared a comprehensive study indicating

the present law on products liability in 17 European States and in the United States of America, Canada and Japan. The study contained information on statutory provisions, case law and the doctrine of scholars in those countries.

34. On the broader international level, the International Bar Association, in 1972, had discussed products liability in conjunction with consumer protection. A working group was concentrating on the particular questions of limitation of liability by contractual clauses and disclaimers, as well as the effects of warnings, directions for use and other instructions in connexion with the marketing of products which might cause damage. The group would submit its conclusions to the International Bar Association's world conference in 1974.

35. The Conference of the Hague on Private International Law, at its twelfth session in 1972, in the field of conflict of laws, had adopted a Convention on the Law Applicable to Products Liability.⁷ That Convention had been opened for signature on 1 October 1973.

36. As marketing and distribution of mass-produced goods were effected across national frontiers and between the different continents of the world, damage caused by such products and the protection of consumers and other victims was of international concern. Moreover, products liability, its basis and extent, was a factor to be included in the costs of production and distribution. The growing importance of that liability inevitably affected international trade and the terms of trade.

37. His delegation felt that there was a need for international harmonization of the law in that field, in order to facilitate international trade by a unified system of liability standards. Such harmonization would also facilitate the protection of consumers suing for damages across frontiers and more extensive products liability insurance. The matter was rather urgent, in order to avoid the development of unnecessarily diverging laws and a possible distortion of the terms of trade, to the detriment of international trade and the international consumer market.

38. Mr. YASSEEN (Iraq) congratulated the Vice-Chairman of the Commission on the quality of its report and on his introduction of it. His delegation had followed with interest the progress of the Commission's work; the Commission met a genuine need of the international community and its task was an essential one, namely the harmonization of international trade law. The report showed that the Commission had made progress on all fronts and on all subjects on its agenda, particularly the priority topics. No aspect of that work had yet been completed, and his delegation would therefore confine itself, on the present occasion, to general remarks, with particular reference to the Commission's working methods.

39. His delegation welcomed the Spanish proposal, referred to in paragraphs 140 to 143 of the report, concerning the greater use of working groups and

⁷ See *The American Journal of Comparative Law*, published by the American Association for the Comparative Study of Law, Winter 1973, vol. 21, no. 1, p. 150.

experts. That proposal reflected the importance of working groups and also the importance of having recourse to the services of experts. He noted that one representative had noted in the Commission that the primary aim of the Commission's work should not be the technical perfection of legal texts, but the elaboration of uniform rules which were acceptable to the international community as a whole and had advocated caution with regard to reliance on the work of experts. However, he himself felt that, if the Commission succeeded in preparing technically perfect texts, that would facilitate their acceptance by the international community. Accordingly, he felt that the Commission should, if necessary, call on experts for consideration of delicate questions, which abounded in its work.

40. A delicate question relating to the working methods of the Commission was its relationship with the Secretariat. He felt that the Commission was asking the Secretariat to do work which, in his opinion, fell within the framework of the terms of reference of the Commission itself. That practice should be avoided. He cited in that connexion the Commission's decision, contained in paragraph 85 of its report, concerning international commercial arbitration. The work which the Secretary-General was requested to carry out in that decision, i.e. the preparation of draft rules, was a task which, in his view, the Commission should perform itself. The report contained many other such examples.

41. He felt that the validity of contracts concerning the international sale of goods was an extremely important topic and that the Commission should take the initiative and should not only consider the draft of a uniform law prepared by UNIDROIT but should endeavour to fill the lacuna in ULIS.

42. With regard to the question of multinational enterprises, some of their activities might in future constitute a category outside the conventional scope of conflict of laws. Consideration might thus be given to preparing a uniform law to govern certain of those activities. The Commission had deemed it useful to request information concerning legal problems presented by multinational enterprises, with a view to future work on the topic. However, the Commission's attention should be drawn to the need to provide guarantees for those parties dealing with multinational enterprises and lacking the considerable economic power of the latter.

43. He found particularly striking chapter VIII of the Commission's report, concerning the establishment of a union of *jus commune* in matters of international trade. The representative of France had raised an important question relating to the effectiveness of the Commission's work and measures which should be taken to accelerate ratification of or adherence to conventions concerning international trade law. Consideration of the French proposal had given rise to certain controversy in the Commission, but, fortunately, some representatives had felt that it was within the Commission's terms of reference to follow up the fate of the texts which it prepared. Again, however, it had been the Secretary-General who had been requested to examine the causes of delay in ratification of or

adherence to such international conventions and to propose means of avoiding such delay.

44. Although he agreed with the arguments that the question was a general one and should be considered primarily by the International Law Commission, upon whose competence the United Nations Commission on International Trade Law should not infringe, international conventions in the field of international trade law had special characteristics, which influenced the question of their ratification. Accordingly, while the general problem came within the sphere of competence of the International Law Commission, all organs engaged in codification work should co-operate, and each could make its individual contribution to resolving the general problem. He was gratified that the United Nations Commission on International Trade Law was interested in considering the question. Without impairing the discretionary power of States with regard to ratification, which was their sovereign prerogative, it was particularly necessary that, above all, ways should be found to overcome administrative inertia, which was one of the major causes of delay in ratification or adherence.

45. The criticism had been made that the pace of work of the United Nations Commission on International Trade Law was somewhat slow. He pointed out, however, that it was dealing with questions of international trade law and often tried, in order to solve them, to follow not the conventional method of conflict of laws, but the method of uniform laws. Uniform laws opened new horizons for private international law, but the task of preparing them was extremely delicate and required serious work and thorough study. The Commission had made good use of the past few years and had embarked on useful work in many areas. It had even succeeded in completing the draft convention on prescription (limitation) in the international sale of goods. In short, his delegation found the Commission's achievements to date commendable.

46. Mr. M'BAYO (Sierra Leone) expressed his delegation's appreciation of the excellent work done by the Commission. The report on the work of its sixth session reflected the seriousness with which it had deployed its efforts and was a decided improvement on the already outstanding material it had submitted in the past.

47. In his delegation's view, the Commission's work conformed to the over-all objectives which formed the basis of the Charter of the United Nations. When the General Assembly in 1966 had decided by its resolution 2205 (XXI) to establish a Commission to further the progressive harmonization and unification of international trade law, his delegation had been optimistic that the work of codification to be undertaken would help to engender an atmosphere in which all States, regardless of their ideological and legal backgrounds, would be committed to deal with each other in a spirit of mutual understanding, equality and justice.

48. Many of the agreements inherited by countries formerly under colonial administration had been found inadequate and not necessarily in the interests of the

independent developing countries, which had therefore supplemented them by new agreements of a purely bilateral nature. However, whether they had concluded those agreements with their traditional trading partners or with new-found friends, they had been to a considerable extent handicapped by the lack of direct experience in those fields. The imbalance involved in pitching their efforts against those of more developed and experienced traders had been largely responsible for the inequitable distribution of the benefits of contemporary international trade and the widening gap between the export earnings of the developed and the developing countries.

49. Sierra Leone, like many other developing countries, was committed to the promotion of economic growth based on social justice. It therefore could not and would not advocate the promotion of international trade under laws that did not reflect the same pre-occupation for fair and equitable dispensation of the benefits therefrom. That was why his country had been enthusiastic about the decision of the General Assembly to set up a commission with a clear mandate to codify, simplify and further harmonize international trade law. His country had been committed to the aim of financing development programmes, conducting foreign trade and inducing foreign investments, and the adoption of a uniform and international trade law had seemed the best way it could compensate for its relative inexperience in international trade.

50. He commended the Commission's decision to concentrate on four questions which, in his delegation's view, must be of priority interest to all States. His delegation also endorsed the Commission's decision to proceed, where possible, by consensus. The experience of the United Nations had proved that decisions adopted without unanimous backing had largely proved to be exercises in futility. His delegation supported the establishment of small working groups to deal with specific topics.

51. With regard to the formulation of uniform rules to govern the international sale of goods, his delegation agreed that that was a matter of great importance and necessity. He noted with satisfaction the study by the Secretary-General⁸ on which the working group had based its efforts to consolidate in a single unified system the various provisions of ULIS relating to the remedies of the buyer. His delegation had taken note of and was studying the consolidation of the six separate remedial systems that appeared in ULIS. That constituted a substantial simplification of the law and was an endeavour to resolve the problems of the separate remedial systems which had resulted from overlapping and inconsistent provisions. However, his delegation felt that the complexities of the subject made it imperative that the Commission should give the topic further study. With regard to standard contracts, his delegation supported the Commission's decision that the conditions drawn up under the auspices of the Economic Commission for Europe should be studied in co-operation with the regional economic commissions and with interested trade associations, chambers of commerce and similar organizations from different regions. Use-

ful and practicable as those conditions might seem, there was at present no evidence that their wholesale application under the auspices of the United Nations and regional organizations would have even minimal success in achieving the end sought.

52. His delegation noted that further work was being done by the Secretary-General in connexion with the draft uniform law on international bills of exchange and international promissory notes. His delegation would comment on the Secretary-General's report contained in document A/CN.9/67 at an appropriate time.

53. It noted with satisfaction the progress made so far with regard to international legislation on shipping.

54. His delegation was gratified by the gesture of countries which, like Australia, were prepared to promote the implementation of the Commission's programme of training and assistance in the field of international trade law. Their example was worthy of emulation. His delegation was anxious to see what UNITAR would do towards the arrangement of seminars on international trade law in developing countries. The holding of such seminars would go far towards justifying the hopes of the developing countries in the effectiveness of the Commission.

55. Mr. SANDERS (Guyana) congratulated the Vice-Chairman of the Commission on his lucid introduction of its report on the work of its sixth session. His country attached great importance to the work of the Commission, which was of great and growing importance for international commercial relations.

56. Much of the Commission's work was accomplished at the level of the working groups, and his delegation endorsed the Commission's decision that the various working groups should continue their work along the same lines under their respective terms of reference.

57. On the question of the general conditions of sale and standard contracts, his delegation endorsed the Commission's decision, in particular its request that the Secretary-General should co-operate, in the preparation of a set of uniform general conditions, with the regional economic commissions and with interested trade organizations, chambers of commerce and similar organizations from different regions.

58. His delegation supported the Commission's request to the Secretary-General to prepare an analysis of observations received from Governments and banking and trade institutions not represented in the International Chamber of Commerce with regard to the proposed revision of the "Uniform Customs and Practice for Documentary Credits".

59. His delegation agreed with the reservation expressed by some members of the Commission regarding paragraph 2 of the Commission's decision on international commercial arbitration.

60. As a developing country, Guyana warmly welcomed the Commission's decision to request the Secretary-General to accelerate and intensify the activities relating to the programme of training and assistance in the field of international trade law, with special regard to the needs of developing countries. It particularly welcomed the request for the organization of an international symposium on the role of universities and

⁸ See A/CN.9/75, annex II.

research centres in that field in connexion with the Commission's eighth session.

61. His delegation welcomed the Commission's decision to study the legal problems posed by the operations of multinational enterprises. Although those problems were of an economic, political and social nature, it was important to attempt to bring them within the scope of international law, since the activities of multinational enterprises could adversely affect international trade. The replies to the questionnaire being sent to Governments as well as the results of studies on multinational enterprises being carried out by various United Nations bodies could give direction to the Commission's future work on that subject.

62. His delegation commended the Commission's decision to re-examine at its next session the desirability of establishing a small working party to formulate proposals regarding ways and means to accelerate the ratification of or adherence to conventions concerning international trade law. Such conventions were an important means of bringing a degree of order and uniformity into the present chaos of national laws governing international business transactions. After uniformity was achieved, it might be appropriate to strive for certainty which, as his delegation had pointed out at the last session of the Commission, could be facilitated by the establishment of a world trade court.

63. His delegation saw great merit in the suggestion made at the preceding meeting by the representative of Czechoslovakia, who had urged consideration of the question of increasing the Commission's membership so as to make it possible to establish more working groups and thereby facilitate the Commission's work. That idea should be given serious consideration. A start in that direction could be made immediately by increasing the number of States invited to participate as observers in the working groups.

64. With regard to the date of the next session of the Commission, his delegation supported the appeal just made by the representative of Kenya that serious consideration should be given by the Secretariat to the possibility of rescheduling the seventh session of the Commission in view of the possible conflict of dates with the Third United Nations Conference on the Law of the Sea.

65. Sir Vincent EVANS (United Kingdom) thanked the Vice-Chairman of the Commission for his most helpful introduction of the report now before the Committee and recalled the leading role played by the Vice-Chairman's country in the establishment of the Commission.

66. As at previous sessions, the Commission had conducted its work at the sixth session in a businesslike manner and had displayed an admirable spirit of cooperation.

67. The Secretariat should also be congratulated for the positive and constructive role that it had continued to play in the Commission's work. It was evident that the Commission leaned heavily on the Secretariat and was fortunate to be served by lawyers of exceptional skill and experience. He did not agree with the view expressed by the representative of Iraq

that the Secretariat was assuming too great a role. It performed a very valuable service in preparing reports and draft texts for the Commission's consideration; without its help the Commission would not have advanced so far on the many subjects with which it was dealing.

68. The Conference on prescription (limitation) in the international sale of goods, which was to be convened in 1974 to complete the work begun by the Commission, would be a milestone in its history. His delegation looked forward to that Conference and hoped that it would be a success.

69. The Commission's work on other substantive topics, as was apparent from the report, was still at a very preparatory stage. Nevertheless, progress was being made and his delegation did not share the concern expressed by some at the slow pace of the Commission's work. The topics the Commission had selected for study were important and complex, affecting many interests which must be carefully balanced. It was essential that the Commission should proceed with careful deliberation in its work, taking all factors into account. Quality in that context was more important than speed.

70. At the same time, it was important for the Commission to keep its work programme and its methods of work under review. In that connexion, he agreed with the observation of the representative of Hungary at the preceding meeting that progress could be too slow. If studies took too long to complete, interest would be lost. Accordingly, it was very important, in his delegation's view, that the work programme of the Commission should not be overloaded. It should not try to undertake too many tasks concurrently but rather concentrate on the completion of a few topics at a time. That did not mean that the Commission should cease or suspend work on any of the items on its active work programme, but it should not be asked to embark on any new work for the time being. It might be appropriate, however, for it to intensify work on one or two topics currently under study and perhaps set target dates for their completion.

71. His delegation did not think it would help to increase the size of the Commission or the number of working groups, but it might be possible for at least those working groups engaged on subjects selected for intensified work to meet for more than two weeks a year. However, that was only a suggestion; it was for the Commission itself to organize its work programme. In general, his delegation was very satisfied with the methods of work the Commission had adopted and the progress it had made thus far.

72. Turning to the items on which the Commission was at present working, he noted that the revision of ULIS was proving a formidable task. He was confident, however, that work on that subject would proceed more rapidly from now on. He welcomed the fact that the revision was tending in the direction of a simplification of the uniform law, which would no doubt make it more widely acceptable.

73. The Commission had requested the Secretary-General to continue work on the preparation of a set of uniform general conditions of sale for optional

use by traders. His delegation was not opposed to that project but continued to believe that general conditions of the kind which the Economic Commission for Europe had drawn up for particular commodities were likely to prove better suited to the needs of specific trades. His delegation therefore still had some doubts as to whether the results likely to be achieved by the approach being followed by the Commission would justify the work involved.

74. The Working Group on International Negotiable Instruments appeared to have made satisfactory progress on the basis of the valuable study prepared by the Secretary-General (A/CN.9/67) and his delegation had no comments to offer on that work at the present stage, except to emphasize the importance of the Working Group's close collaboration with banking and trade institutions.

75. In the field of international legislation on shipping, work on the revision of the Brussels Convention of 1924 and the Protocol of 1968 seemed to be proceeding very fast. It would, in his delegation's opinion, be undesirable to rush it any more. It appeared that the Working Group might be in a position to submit a final text to the Commission in 1974 or 1975.

76. His delegation greatly appreciated the very thorough report on international commercial arbitration prepared by Mr. Nestor, Special Rapporteur (A/CN.9/64).⁹ His Government had studied that report with great interest and had submitted a written reply to the questionnaire on the proposals made in it.¹⁰

77. His delegation had no objection to the Commission's recommendation that the General Assembly should invite States which had not yet ratified or acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 to consider the possibility of doing so. His country was in fact among those which had not yet ratified it, but his Government expected to introduce legislation at the present session of Parliament to enable the United Kingdom to do so.

78. International commercial arbitration was a field in which a great deal of work had already been done by many organizations with varying degrees of success. That fact was bound to raise questions as to the advisability of even further efforts by the Commission to draw up model arbitration rules. However, his delegation understood the reasons why the Commission had found it useful to request the Secretary-General to draw up a set of arbitration rules for optional use in *ad hoc* arbitration. The Commission had very wisely attached a condition to that request, namely, that the Secretariat should report to the Commission if its studies and consultations led it to the conclusion that it was not desirable after all to draw up the proposed rules.

79. His delegation noted that the Commission had requested the Secretary-General to draw up a questionnaire on the subject of multinational enterprises and to make suggestions as to the Commission's future

⁹ See *Yearbook of the United Nations Conference on International Trade Law*, vol. III: 1972 (United Nations publication, Sales No. E.73.V.6), p.193.

¹⁰ See A/CN.9/79 and Add.1.

course of action on that subject in the light of the replies received.

80. His Government shared the view that it would be premature, at least at the present stage of the Commission's work, to pursue the question of establishing a union for *jus commune*. Nevertheless, it recognized that there was a problem in securing wide and early ratification of multilateral conventions. For the time being, his delegation saw no satisfactory alternative to relying on traditional multilateral treaty-making methods. The problem had to be faced in relation to each particular instrument, and Governments must be relied upon to take in good faith the necessary steps to ratify at the earliest moment conventions the adoption of which they had supported. A system requiring Governments to report progress towards ratification could be efficacious in that regard. That would be one way of helping to overcome the administrative inertia to which the representative of Iraq had referred and which, as was common knowledge, was one of the major reasons for non-ratification of multilateral conventions.

81. On the subject of training and assistance in the field of international trade law, he recalled that last year he had informed the Committee of a five months' course which was given annually in the United Kingdom to government legal officers from developing countries. The tenth such course was currently in progress, with 23 legal officers from 19 different countries attending. He was glad to be able to inform the Committee that it had been decided to increase the international trade law element in those courses. The number of hours of lectures on that subject in the current course had been increased from 9 to 22, the lectures being given by a number of eminent British authorities in the field.

82. Mr. KOLESNIK (Union of Soviet Socialist Republics) expressed satisfaction with the report of the Commission on the work of its sixth session and stressed the importance of world trade, which was becoming a significant means of improving the general climate of international relations. The recent USSR proposal (A/9191) to reduce military expenditures by 10 per cent was a further step in that direction. If adopted, such a measure would undoubtedly have a favourable impact on the development of international trade, which in turn would serve to strengthen friendly relations between States, relax international tensions and consolidate peace throughout the world. In that connexion, he drew attention to a statement made a few days ago at the World Peace Congress in Moscow by Leonid Brezhnev, the General Secretary of the Communist Party of the Soviet Union, who had emphasized that the development of international trade and economic co-operation was a means of strengthening peaceful relations between States, a goal to which the Soviet Union was firmly committed.

83. The Commission had made a significant contribution to the progressive development of the rules of international trade law, and it should be encouraged to devote even more attention to removing any discriminatory elements from international trade and to putting an end once and for all to the vestiges of colonialism which, regrettably, still persisted in parts of the world.

If the Commission's work was to be effective, it should base itself on the generally accepted principles of strict respect for sovereignty, the equality of States, non-intervention in the internal affairs of States and the eradication of discrimination.

84. The Vice-Chairman of the Commission was to be commended on the informative introductory statement he had made to the Committee. He had given an excellent summary of the great deal of useful work the Commission had accomplished not only at its last but also at previous sessions.

85. The Commission's procedure whereby decisions were taken whenever possible by consensus was extremely important. Consistent application of that procedure would go a long way towards ensuring the success of the codification drafts the Commission was called upon to elaborate.

86. Turning to the individual topics the Commission was dealing with, he noted that the Working Group on the International Sale of Goods had made progress on the important items which came within its mandate. His delegation supported the continuation of the Working Group's efforts along the present lines.

87. His delegation appreciated the report of the Secretary-General on the feasibility of developing general conditions of sale.¹¹ The Soviet Union favoured broader application of the ECE general conditions and was of the view that any efforts to draft a further set of general conditions should take into account the need to embrace the widest possible scope of commodities.

88. His delegation welcomed the work done on international payments and endorsed the Commission's decision to defer consideration of the substantive provisions of the draft uniform law on negotiable instruments until the Working Group had completed its work and submitted a final draft with commentary. It was essential that, in regard to legal terminology, the final draft should establish a just equilibrium between the main systems of negotiable instrument law.

89. With regard to international legislation on shipping, his delegation supported the Commission's decision to request the Working Group to continue its work under the relevant terms of reference and to complete that work expeditiously.

90. On the topic of international commercial arbitration, his delegation endorsed the Commission's recommendation that the General Assembly should invite States which had not ratified or acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards to consider the possibility of doing so and the encouragement by the Economic Commission for Europe of wider acceptance of the European Convention on International Commercial Arbitration. It also supported the decision of the Commission to request the Secretary-General to prepare a set of arbitration rules for optional use in *ad hoc* arbitration and took note, with some reservations, of the proposal of the Special Rapporteur in paragraph 182 of document A/CN.9/64 that the Commission

should publish a compilation of arbitral awards relating to international trade.

91. At the twenty-seventh session of the General Assembly his delegation (1333rd meeting) had had an opportunity to state its views on the Commission's programme and methods of work. Without repeating those views in detail, he wished to stress again the importance of keeping costs as low as possible. In that connexion, he welcomed the recommendation of the Commission to hold the forthcoming Conference on prescription (limitation) in the international sale of goods at the Headquarters of the United Nations. He was also gratified that the Commission had adopted a number of suggestions aimed at improving its working methods. The Commission's programme of work should be kept under constant review and its attention should be concentrated on the most urgent issues. In particular, more attention should be given to the question of removing discriminatory practices in international trade.

92. Mr. BETTAUER (United States of America) said that his country strongly supported the work of the Commission and was happy to see that its work was continuing in an encouraging manner. His Government appreciated the leadership provided by the Chairman of the Commission at its sixth session and the contribution made by the Rapporteur. In addition, the introduction to the Commission's report given by the Vice-Chairman had been most helpful.

93. His Government continued to support the work being done to revise ULIS of 1964 and was appreciative of the considerable progress made by the Working Group on that subject. It was to be hoped that at its January 1974 meeting the Working Group would be able to resolve the remaining questions posed by the articles on the obligations of the buyer, as well as to complete the first reading of the articles containing provisions common to obligations of the seller and the buyer. With regard to the work under way on the general conditions of sale and standard contracts, his Government greatly appreciated the report prepared by the Secretary-General, which was of first quality and exceedingly comprehensive.

94. His Government supported the decision, referred to in paragraph 34 of the report, to have the Secretariat circulate a questionnaire on the issue of whether the draft uniform law on international bills of exchange and international promissory notes should be extended to include cheques. It also appreciated the continuing co-operation of experts from other international organizations in the Commission's work in that field. The Working Group would no doubt continue to make progress on that topic in the future.

95. Regarding international legislation on shipping, his delegation welcomed the progress made by the Working Group charged with revising the International Convention for the Unification of certain Rules relating to Bills of Lading of 1924 and the Protocol amending that Convention of 1968. It was to be hoped that that work would be completed by 1975.

96. On the topic of international commercial arbitration, his delegation appreciated the excellent report by the Special Rapporteur submitted to the Commission

¹¹ A/CN.9/78.

at its fifth session and the report of the Secretary-General submitted at its sixth session,¹² which had been helpful in determining the direction of future work to be done in that area. His Government supported the decision set forth in paragraph 85 of the report requesting the Secretary-General to prepare a draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade. It agreed that the Commission itself should not initiate further work on arbitration at the present stage, but should await submission of the Secretary-General's report at the eighth session.

97. The United States supported the Commission's programme on training and assistance in international trade law. A number of students and lawyers from developing countries were currently holding internships or fellowships in the United States to study or obtain practical experience in international trade law matters. His Government also supported the decision of the Commission, recorded in paragraph 107 of the report, to organize, in connexion with its eighth session, an international symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law.

98. With regard to multinational enterprises, his

¹² A/CN.9/79 and Add.1.

Government would give careful attention to the questions posed in the Secretary-General's questionnaire on that subject, which had been circulated in compliance with the decision of the Commission referred to in paragraph 116 of the report.

99. His Government continued to have doubts as to the advisability of the proposal for establishing a union for *jus commune*. It therefore supported the Commission's decision to request the Secretary-General to prepare a report examining the causes for the delay in the acceptance of international conventions. Based on that report, the Commission would be able to determine whether any further action on that topic was warranted.

100. He noted that the Secretary-General had circulated for Government comments a draft of a law for the unification of certain rules relating to the validity of contracts of international sale of goods prepared by a working group appointed by the International Institute for the Unification of Private Law. While recognizing the usefulness of that contribution, his delegation believed that the Commission should concentrate on completing the revision of the uniform law on sales before taking up that additional aspect of the subject.

The meeting rose at 6 p.m.

1428th meeting

Thursday, 1 November 1973, at 3.20 p.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1428

In the absence of the Chairman, Mr. Shitta-Bey (Nigeria), Vice-Chairman, took the Chair.

AGENDA ITEM 92

Report of the United Nations Commission on International Trade Law on the work of its sixth session (*continued*) (A/9017, A/C.6/L.901)

1. The CHAIRMAN recalled the Committee's decision adopted at the preceding meeting to elect Mr. Bozanga of the Central African Republic to the vacant office of Rapporteur, and welcomed him on behalf of the Committee.

2. Mr. BOZANGA (Central African Republic), Rapporteur, expressed his pleasure at the Committee's decision to elect him Rapporteur to replace Mr. Mandé-Djapou, who had been called home for reasons of health. He would do his best to justify the trust the Committee had placed in him.

3. Mr. KLAFKOWSKI (Poland) stressed the important role played by the codification, simplification and harmonization of international trade law in eliminating obstacles to international trade, mitigating the fears of the weaker parties to a trade transaction, and providing legal certainty in such transactions. The fact that the United Nations Commission on International Trade Law represented a wide range of

legal, economic and social systems made it the most suitable body to undertake the task of unification.

4. On the question of the Commission's method of work referred to in its report (A/9017) he said that the Vice-Chairman of the Commission had been right in pointing out that the Commission's methods of work and effectiveness were closely linked with the large number of questions with which it was concerned. It should be allowed to decide on its own method of work. Its efforts in that connexion had already been quite useful; it had made important contacts with other United Nations bodies, specialized agencies, and non-governmental and inter governmental organizations.

5. The Commission made a practice of reaching decisions by consensus. All the decisions taken at its sixth session had been adopted unanimously, and even though it was clear from the annex to document A/C.6/L.901 that the African countries had reservations regarding paragraph 2 of the decision on international commercial arbitration (*ibid.*, para. 85), that too had been adopted unanimously. It indicated that the rules of international trade law went beyond the boundaries of economic systems and provided a sound basis for universality. The developing countries had the same opportunity as others to participate in the unification of international trade law.