

sale were only a secondary aspect of the topic, they were nevertheless an essential step in the process of arriving at a unification of rules governing the international sale of goods.

82. The question of negotiable instruments presented serious difficulties, but it was a field in which there were ample precedents. The same could be said of international commercial arbitration, bearing in mind the feasibility of regional legislation as a preliminary step towards universal legislation. Uniformity could be one step towards unification.

83. His delegation fully supported the idea of holding in 1975 the symposium on the role of universities and research centres in the teaching, dissemination and

wider appreciation of international trade law, and considered that it should not be postponed to a later date.

84. His delegation felt that the Commission should study the legal problems arising in the field of multinational enterprises, whose proliferation and increasingly extensive activities were a characteristic of the contemporary world. The phenomenon should be brought within the field of legal regulation as soon as possible.

85. It would be advisable to increase the number of members of the Commission, taking into account the principles of equitable geographical distribution and representation of the different legal systems and allowing developing countries to play as full a part as possible.

The meeting rose at 5.30 p.m.

1429th meeting

Monday, 5 November 1973, at 3.30 p.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1429

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. Mr. VALLADÃO (Brazil) having congratulated the Vice-Chairman of the United Nations Commission on International Trade Law on his lucid introduction of the report under consideration (A/9017), emphasized the importance of international trade in the contemporary world. He hoped that Brazil, a member of the Commission since its inception, would be re-elected to the Commission by the current General Assembly. His delegation was gratified by the progress made at the sixth session of the Commission, especially in so far as the four priority topics on its agenda were concerned, namely the international sale of goods, international payments, international legislation on shipping and international commercial arbitration.

2. With regard to the first of those topics, it was noteworthy that the Working Group on the International Sale of Goods established to determine whether the Uniform Law on the International Sale of Goods (ULIS) should be revised or a new text prepared had made considerable progress in its work and had been guided by a spirit of simplification. The preparation under United Nations auspices of general conditions of sale and standard contracts could help to accelerate commercial transactions between countries with different economic systems and would help to bring new economic partners together. The final draft must be envisaged as containing residual and non-compulsory rules to which parties might resort where there was a lack of accord on the conditions of a given contract; in that respect the entire liberty of action of the buyer and seller should prevail. His delegation supported the Commission's decision to request the Secretary-General to set up a group of experts to assist in the preparation of a set of uniform general conditions.

3. The second priority topic had been the subject of the work of the first session of the Working Group on International Negotiable Instruments. Within the space of one week, that Working Group had succeeded in examining articles 12 to 40 of the draft uniform law on international bills of exchange and promissory notes. His delegation concurred with the view that in that extremely specialized area it was essential that much care should be devoted to terminology and style so that the final draft uniform law would establish a just equilibrium between the main systems of law applicable to negotiable instruments. It also supported the Working Group's decision, ratified by the Commission, to postpone consideration of the question of a uniform law applicable to international cheques to allow the Secretary-General to undertake consultations with international organizations and banking and trade institutions.

4. Turning to the third priority topic, he expressed satisfaction at the speed with which the Working Group on International Legislation on Shipping was performing its duties in reviewing and amplifying the rules of the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels in 1924. That was an issue of major concern for most developing countries, heavily dependent as they were on foreign flags to transport their products. The positive results of the group's fourth and fifth sessions warranted the Commission's decision to request it to continue its work and complete it expeditiously.

5. Concerning the fourth priority topic, international commercial arbitration, he endorsed the measures taken by the Commission relating to the promotion of existing conventions on that sphere and the question of the desirability and feasibility of adopting a set of model arbitration rules on a universal basis. He expressed admiration for the Special Rapporteur on the topic for his valuable contribution to the Commission's work.

6. As to the legal problems presented by multinational enterprises, his delegation believed that the Commission should be provided with a wide range of information before undertaking any concrete course of action in that area and therefore welcomed the decision the Commission had taken in that regard.

7. With reference to the establishment of a union for *jus commune* in the field of international trade, it was most desirable to examine the causes of delay in ratification of or adherence to conventions concerning international trade law before determining what steps could be devised to speed up world-wide acceptance of the instruments in question.

8. His delegation was gratified by the holding of an international symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law and hoped that voluntary contributions would be received from Governments to enable a large number of nationals of developing countries to attend.

9. Mr. SAM (Ghana), referring to the work of the Working Group on the International Sale of Goods, recalled that at the previous session (1335th meeting) his delegation had stressed that, in the revision of the Uniform Law annexed to the Convention of The Hague of 1964¹ (ULIS), overlapping should be avoided and account taken of the hard facts of international trade. It had further expressed the hope that the language used in the revised text of ULIS would be simple and easily understood by businessmen and merchants all the world over. His delegation was pleased that the Working Group had taken action to that end. It was also gratified that the Working Group had decided to wait until the Conference on prescription (limitation) had completed its work before deciding whether the cut-off period established in article 39, paragraph 1, of ULIS conflicted with article 10, paragraph 2, of the draft convention on prescription (limitation) in the international sale of goods.²

10. With regard to general conditions of sale and standard contracts, his delegation had always maintained that the question was marginal to the Commission's main task. In any event, it would not be in a position to support the development of any standard contract which made no mention of modes of payment and did not regulate the obligations of manufacturers in respect of the supply of spare parts and maintenance services after sale. Even though it was of the view that such standard contracts would not be sufficiently comprehensive to appeal to the general interest of businessmen, and would not be flexible enough to be applied to a widely divergent range of products, his delegation would co-operate in the achievement of the aims spelled out in paragraph 19 of the report. It considered, as did other delegations, that the words "general conditions" might be replaced by "uniform general conditions".

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.

² See *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 17*, para. 21.

11. Regarding negotiable instruments, he welcomed the progress made by the Working Group on International Negotiable Instruments at its first session. He hoped that the Group would use legal language which could be understood in all legal systems. He would defer comment on the draft uniform law on international cheques until the Working Group dealing with the subject had submitted a final draft uniform law with commentaries.

12. Ghana, which wished to expand its merchant fleet, had always followed the question of international legislation on shipping with interest. His delegation would have wished to see a more detailed report on the work done by the Working Group on International Legislation on Shipping at its fourth and fifth sessions. It fully supported the suggestion that the revised provisions of the Brussels Convention of 1924 should be embodied in a new convention rather than in a second protocol to that Convention. That would afford an occasion to use modern terminology and would give new States Members of the United Nations an opportunity to enrich the new convention with their experience. The Working Group should reconsider its compromise whereby the carrier did not have the burden of proving his due care in the case of loss due to fire, because his delegation found it difficult to accept that compromise. On the other hand, he applauded the removal of the limitation on liability where damage was caused by wilful misconduct of the carrier or his servants or agents and wondered why the same rule could not apply in the case of damage resulting from reckless acts or inexcusable fault of the carrier.

13. The question of international commercial arbitration had given rise to the consideration of a number of problems. As to the promotion of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, his delegation felt that the General Assembly should adopt a recommendation urging States Members of the United Nations to ratify or accede to that instrument. His Government had ratified the Convention, the provisions of which had become the arbitration law of Ghana; as a result it had become mandatory for all international trade contracts to contain arbitration clauses. The main problem that many developing countries encountered with regard to such clauses was that of having one party travel to distant places for the arbitral proceedings.

14. Regarding the European Convention on International Commercial Arbitration of 1961, his delegation was of the view that it could usefully be studied by the regional economic commissions. Before considering the establishment of a working group to examine the desirability of drawing up a model set of arbitration rules and the feasibility of unifying and simplifying national rules on arbitration, his delegation thought that the Secretariat should examine the problem further and report to the Commission.

15. It felt that the publication of arbitral awards would be premature, for some method should first be found whereby the rights of the parties involved would not be infringed.

16. He was happy to note that a number of countries, especially Australia, had expressed the desire to help nationals of developing countries to do research work in developed countries in the field of international trade. The symposium which the Commission had agreed to organize in connexion with its eighth session should last four or five days in order to permit a useful exchange of views. If the last week of the Commission's session were devoted to the symposium, no additional expenditure would be incurred. He hoped that more Governments would follow the example of the Australian Government, which was considering the possibility of making a contribution towards the travel of participants from developing countries. His delegation also supported the suggestion to arrange seminars on international trade law in the developing countries.

17. On the question of multinational enterprises, he was of the view that the Committee should give more guidance to the Commission. In that connexion, the Committee should determine whether the term "transnational enterprises" might not be preferable to the term "multinational enterprises". He asked if the Committee considered whether the latter term should or should not comprise financial, servicing, distributing or transport enterprises. It would appear that resolution 2928 (XXVII) adopted the previous year had envisaged not only private enterprises but also State and other public enterprises. As was apparent from paragraph 111 of the report of the Commission, the wording of the Mandate given by the General Assembly had not been perfectly clear. Accordingly, he supported the Commission's decision in paragraph 116 of its report.

18. His delegation was in favour of the French proposal for the establishment of a union for *jus commune* but had doubts as to the timeliness of the proposal. The establishment of a working party on that topic would also appear not to be timely; moreover, the problem of ratification of conventions was not peculiar to instruments concerning international trade law. Studies were being carried out in that regard, and it would be preferable for the Secretariat, instead of undertaking a study of the causes for delay in ratification, to consider the feasibility and usefulness of developing a system of *jus commune* in that field. The Commission should not give any priority to that topic. On further reflection, his delegation was inclined to support the suggestion that the topic should be referred to the International Law Commission.

19. He endorsed the Commission's work programme for 1974, which took due account of the policy of budgetary restraint. He hoped that the Conference on prescription would be held immediately after the seventh session of the Commission, to be held in New York, for the sake of economy in the travel expenses of participants. He endorsed the suggestions made by the representative of Spain which were mentioned in paragraphs 140-143 of the report with regard to the Commission's methods of work; regarding the use of experts, the Commission should act with some caution, as its aim was not to draft technically perfect legal texts but rather to elaborate uniform rules acceptable to the international community as a whole.

20. As to the rate of the Commission's work, he emphasized that quality should be more important than speed. He stressed the importance of taking decisions by consensus and pointed out that the ultimate aim was universal acceptance of the conventions worked out by the Commission. An exception to that rule could, however, be made in the case of procedural matters. He supported the suggestion made by the representative of Norway (1427th meeting) that the Commission should take up the topic of the harmonization of the law on producers' civil liability for damage caused by their products intended for international distribution. That topic was definitely of interest to the developing countries but it should not be given priority consideration pending the outcome of the work of the Expert Committee appointed in 1972 within the Council of Europe, which was preparing a draft uniform law on the subject.

21. His delegation also supported the Czechoslovak suggestion (1426th meeting) to increase the membership of the Commission, which would make it possible not only to set up more expert groups but also to relieve some delegations from serving on many working groups. Like the Special Committee on the Question of Defining Aggression, the Committee could have 35 members.

22. Mr. BAILEY (Australia) said that his country, in light of its geographical position, had an interest in the progressive development of international trade law and, as a member of the Commission, had participated in its work for the past six years.

23. His Government attached considerable importance to the matter of training and assistance in the field of international trade law. At the sixth session of the Commission the representative of Australia had announced that his Government was prepared to offer a fellowship of \$A 5,000 that would enable a young scholar from a developing country to undertake the production of teaching materials in Australia. At earlier sessions of the Commission, representatives of the developing countries had stressed the need for lawyers, merchants and government officials in developing countries to obtain practical experience in commercial and financial institutions in developed countries. His delegation was pleased to repeat its offer of the previous year; it also believed that arrangements could be made for that purpose with commercial and financial institutions in Australia. His delegation further endorsed the holding of a symposium in connexion with the eighth session of the Commission, but urged that, if the symposium was to be of only two days' duration, participants should be given the opportunity to observe the Commission in action during the last week of the session. His Government was examining the possibility of making a contribution towards the travel expenses of participants from developing countries.

24. Turning to the question of multinational enterprises, which was dealt with in chapter VII of the report of the Commission, he observed that the problem they posed could not be fitted into any existing legal framework and had not been studied before in a systematic way. During the sixth session of the Commission, Australia had strongly urged that it should undertake a study of that question and should develop a

set of international regulations governing multinational enterprises with a view to safeguarding national sovereignty and ensuring the efficient use of world resources.

25. Australia whole-heartedly endorsed the decision whereby the Commission had requested the Secretary-General to draw up a questionnaire and address it to Governments and interested international organizations. His delegation had studied the questionnaire sent out by the Secretary-General and agreed with its format. There was certainly no need at the current stage to give a precise definition of the term "multinational enterprise" because that would be the object of the Commission's work.

26. With regard to the Commission's future work, which was dealt with in chapter IX of the report, the suggestions made at the fifth session by the Spanish delegation with a view to improving the Commission's working methods were completely justified. It would be desirable to shorten the main session and to extend the time available to the working groups. However, it was important not to neglect the work of the Commission itself. Accordingly, that work should be organized so that the Commission would have one major substantive topic for discussion at each main session.

27. His delegation expressed once again its satisfaction with the progress the Commission had made in the various fields of study it had undertaken. It was gratifying that Australia had been able to take part in the Commission's work as a member. If Australia was re-elected to the Commission at the current session of the General Assembly, it would continue to work towards the removal of the remaining legal barriers to international trade.

28. Mr. STANFORD (Canada) noted that his country was not a member of the Commission and did not plan to be a candidate in the forthcoming election. Nevertheless, as a major trading nation, Canada was naturally attentive to the efforts made by the Commission to ensure the progressive harmonization and unification of international trade law.

29. His delegation noted with satisfaction the progress made by the Working Group on the International Sale of Goods, particularly in connexion with the revision and modification of the text of ULIS. His delegation welcomed the Commission's decision that the Working Group should continue its work in that regard.

30. The priority topic of international legislation on shipping was one in which Canada, as a nation with substantial overseas trade across both the Atlantic and the Pacific, had a particular interest. The Canadian authorities had been following closely the work of the Working Group on that topic, and they whole-heartedly approved of the Commission's decision urging the Working Group to continue and complete its work expeditiously. It was probable that a Canadian observer would attend the sixth session of the Working Group.

31. The study of the legal aspects of the activities of multinational enterprises was a topic of the greatest importance. Multinational enterprises had an exceptionally large role in certain key sectors of the Canadian economy. There was a continuing debate about the

most effective way of assuring the continued benefits which the activities of those enterprises undoubtedly conferred, while at the same time ensuring respect for national sovereignty and policies.

32. The Commission was to be commended on its decision to request the Secretary-General to send to Governments and interested international organizations a questionnaire on the legal problems posed by multinational enterprises and subsequently to prepare a report on all aspects of the question. Owing to the promptness with which the Secretariat had responded to the Commission's decision, Governments currently had the questionnaire before them and the Canadian Government, for its part, was preparing a reply.

33. The Commission had demonstrated in the past its ability to co-operate effectively and profitably with other agencies and bodies active in the same area. No doubt that would be equally true of its work on the topic of multinational enterprises. There was also no doubt that the Economic and Social Council could play a useful co-ordinating role with respect to the studies on that subject currently under way within the United Nations family. However, the work of the Economic and Social Council and that of the Commission did not conflict with each other, and it would be most unfortunate if the studies being undertaken under the auspices of the Economic and Social Council were used as an excuse for delaying the work of the Commission on that important subject.

34. Nor did there seem to be any reason to ask the Commission to re-examine or redraft the questionnaire already sent to Governments by the Secretary-General. On the contrary, it was to be hoped that it would deal rapidly with the findings of that wide survey so as to be able to fulfil properly the task appropriate to it in that area, namely to contribute effectively to the harmonization and unification of national laws and regulations so as to create an intergovernmental régime constraining multinational enterprises while at the same time allowing them to develop in an efficient and responsible manner.

35. His delegation hoped that when the time came, the Commission would consider the suggestion made the previous year by the Canadian representative in the Sixth Committee (1329th meeting) that it appoint a group of experts to assist the Commission in studying that question. Such a decision would be consistent with the suggestions made by other representatives on the subject of the working methods of the Commission and would also enable it to discharge its mandate in that area without impairing its work on other priority subjects included in its already heavy agenda.

36. Mr. KRISPIS (Greece) recalled that the main purpose of international trade law was to harmonize the positions of States so as to avoid "lame" legal acts, valid in the eyes of one State but invalid in the eyes of another. That could be achieved in two ways: either by harmonizing the rules of conflict of laws or by harmonizing the rules of substantive law. Either way could produce the same result, namely legal acts that were universally valid. But the uniform conflict of laws rule was simpler and faster, since in that case the content of the substantive rules of the internal laws

of the various States was unimportant, since every State would apply exclusively to a conflict the substantive law determined by the interplay of the uniform conflict rule. In that connexion, his delegation appreciated the opinion expressed by the representatives of Iraq and the United Kingdom at the 1427th meeting. It would be useful to add to the various topics on the Commission's agenda the study of the relevant conflict of laws rules. Such rules could become either a part of a convention on the uniform law governing the relevant topic or a separate convention on the matter. The latter option had been chosen by the Geneva diplomatic conferences, which had led to the adoption of uniform laws on bills of exchange and promissory notes, and on cheques.

37. Two topics might be placed before the Commission in due course: an item dealing with international jurisdiction of (domestic) courts on international trade matters, and another on civil products liability, as suggested by the Norwegian delegation. The work on that topic by the Conference of The Hague on Private International Law in the field of conflict of laws must be completed by a convention on uniform substantive law.

38. Turning to the report of the Commission itself, he said that the progress achieved on the topic of ULIS appeared satisfactory. The work entrusted to the Working Group must certainly be completed expeditiously, but speed was sometimes an enemy of quality. His delegation commended the Commission's decision on the general conditions of sale and standard contracts. It also commended the approach to the draft uniform law on international bills of exchange and international promissory notes. The main difficulties in that direction resulted from the diverging concepts among various legal systems. Moreover, the report of the Commission on the work of its sixth session made it clear that it placed great emphasis on terminology. Yet terminology was surely a secondary matter. The essential point was that agreement should be obtained on matters of substance so that all that remained to be done was to work out provisions in the uniform law specifying the meaning to be attached to the terminology agreed upon.

39. With regard to international cheques, his delegation was strongly in favour of working out a draft uniform law establishing an additional or optional instrument for international payments. The topic of banker's commercial credits was at a preliminary stage. However, in due course the Sixth Committee should examine the whole question of the intervention of banks in international trade with a view to drafting uniform laws on various aspects of banking activities.

40. Work on international legislation on shipping was progressing cautiously, as was right and proper in respect of so vast and complex a topic.

41. With regard to international commercial arbitration, the existing international legislation on the matter was of recent growth. Hence there was no reason why States should be in a hurry to be critical; before trying to amend conventions, they should give them time to show their merits and demerits. However, the Commission must proceed with the task

undertaken, and in that connexion the decision taken by it and appearing in paragraph 85 was a wise one.

42. On that particular point, his delegation was very much in favour of the publication of arbitral awards, and fully agreed with what was stated in paragraph 80 of the report of the Commission. It also favoured the establishment of an international organization of commercial arbitration along the lines suggested by the Special Rapporteur, Mr. Nestor.

43. Chapter VI of the report, on training and assistance in the field of international trade law, was most satisfactory. His delegation fully agreed that a questionnaire should be prepared in order to obtain information concerning legal problems arising out of multinational enterprises; but it had some reservations as to entrusting the relevant work entirely to the Secretary-General. Like the delegation of Iraq, it considered that the Commission was putting too heavy a burden on the Secretariat. A subject which seemed beyond any doubt to be exclusively within the competence of the Commission was the preparation of draft texts. Such texts must be the product of its labour from beginning to end. Clearly the limited duration and number of its sessions obliged it to have such frequent recourse to the services of the Secretariat. His delegation favoured more sessions and more time for each session, and it supported the suggestion by many delegations to increase the number of the Commission's members.

44. In present circumstances, the decision taken by the Commission on the proposed union for *jus commune* was the only appropriate one. The French initiative was admirable, but the notion was too ideal to be feasible in the foreseeable future.

45. Mr. STEPHANIDES (Cyprus) commended the progress made by the Working Group on the International Sale of Goods. The study by the Commission on the question of multinational companies was extremely useful. The complexity of the subject fully justified an effort to co-ordinate the various tasks undertaken within the United Nations system.

46. His delegation congratulated the Commission on the results achieved and fully supported the proposals concerning future work.

47. Mr. WISNOEMOERTI (Indonesia) stressed the need for revising the text of ULIS to enable it to meet the contemporary needs of the international community. His delegation welcomed the progress made by the Working Group in completing the revision of chapter III of ULIS which concerned the obligation of the seller.

48. The work of the Commission on general conditions of sale and standard contracts was of great importance. It contributed to the promotion of international trade based on the principle of equality among States. It must be borne in mind, however, that those efforts were complementary to the main task of the Commission, namely the unification of law. It had been right in deciding to continue the work on the preparation of a draft set of uniform general conditions.

49. Concerning international legislation on shipping, his delegation was somewhat concerned about the compromise provision adopted by the Working Group

at its fourth session,³ whereby the “catalogue of exceptions” to the carrier’s responsibility contained in the Brussels Convention of 1924 had been omitted. The provision should have stated that even in case of fire, the general rule that the carrier had the burden of proving due care should apply. That was important, since it would give fairer treatment and protection to the just interests of the shipper.

50. With regard to international commercial arbitration, Governments should give serious consideration to the possibility of accelerating ratification of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. In addition, the Commission should undertake a study of the possible applicability of the European Convention of 1961 to regions other than Europe, it being understood that the essential task was the development of a system of commercial arbitration on a global scale. His delegation supported the idea of a draft set of arbitration rules for optional use in *ad hoc* arbitration relating to international trade.

51. The problem of training and assistance in the field of international trade law was of considerable importance, especially in the developing countries. He supported the organization in 1975 of an international symposium on the role of universities and research centres in the teaching, dissemination and wider appreciation of international trade law. The United Nations Institute for Training and Research too should organize seminars on the subject in the developing countries.

52. The Indonesian Government welcomed the decision to examine the role of multinational corporations in international trade, since they represented an accumulation of power whose presence in a country could have a positive or a negative influence on its internal affairs. There should therefore be internationally accepted norms to regulate their operations. However, it would be well to await the replies to the Secretary-General’s questionnaire and the subsequent report before adopting a position on the subject.

53. The French delegation was to be congratulated on its initiative in proposing the establishment of a union for *jus commune* for the purpose of promoting ratification of conventions on international trade law. The proposal was no doubt premature, but it should be kept in mind for consideration in the future. It also seemed desirable to concentrate primarily on the means of accelerating ratification rather than on the causes of delay. It would no doubt be possible to achieve wider acceptance of conventions by paying due heed to the diversity of national interests in the international community and especially the specific needs of the developing countries.

54. Like other members of the Committee, his delegation would like the Commission to consider the possibility of doing its work more on its own by using working groups.

55. Mr. OKOGWU (Nigeria) said that his country, which was a member of the Commission, wished to congratulate the Vice-Chairman of that body on his

introduction of the report on the work of the sixth session.

56. His delegation had listened with great interest to the views expressed on the work of the Commission, particularly the important problem of the civil liability of producers which had been evoked by the representative of Norway (1427th meeting). Since his delegation’s views on the questions proposed for consideration by the Sixth Committee had already been expressed to the Commission, he would confine his remarks to a few matters.

57. With regard to the contents of the contract of carriage of goods by sea and the negotiability of bills of lading, he recalled that in accordance with article 3, paragraph 3 of the Brussels Convention of 1924,⁴ the information required could only be given on bills of lading, to the exclusion of all other documents. It seemed, however, that that was a matter of construction. The essence of the bill of lading was not its format but its general ability to fulfil the purposes for which it was intended. There was therefore no reason why the same information should not be included in another document, for example a receipt, if that document could fulfil the same obligations as a bill of lading. The negotiability of bills of lading would be facilitated if the CIF values of the goods covered were shown on the face of the document.

58. With regard to the validity and effect of letters of guarantee, shipping agents sometimes agreed to issue to shippers clean bills of lading for goods which did not fulfil all the required conditions in exchange for letters of indemnity absolving the agents from all possible consequences. Although that was a current practice, it had been condemned by courts in various countries. It was contrary to article 6 of the Brussels Convention of 1924, which stipulated, among other things, that the carrier and the shipper were free to enter into any agreement under any conditions provided that its provisions were not contrary to public policy, and that no bill of lading had or would be issued. International legislation on that subject was not sufficient to protect the interests of third parties, and it would be advisable for the future convention to contain a clause prohibiting the inclusion in the bill of lading of any provision prejudicial to third parties.

59. With regard to protecting the good-faith purchaser of bills of lading, he noted that article 3, paragraph 3 (c), of the Brussels Convention of 1924 referred only to “the apparent order and conditions of the goods”, thus limiting the responsibility of carriers to the “apparent” condition of the goods transported. When a bill of lading was transferred and the real condition of the goods did not correspond to their apparent condition, the good-faith purchaser of the document should be able to request that the transaction be voided. The additional cover provided by article 1, paragraph 1, of the Brussels Protocol of 1968⁵ seemed to be satisfactory in that connexion.

60. Turning to other subjects, he said his delegation was convinced that multinational enterprises, by reason

³ A/CN.9/74.

⁴ League of Nations, *Treaty Series*, vol. CXX, No. 2764, p. 155.

⁵ See Société du Journal de la Marine marchande, *Le Droit maritime français*, 20e année, No. 235 (July 1968), p. 396.

of their size and the secrecy surrounding their activities, were a troublesome symptom of concentration of economic power. His delegation was therefore following with interest the work on the subject being done by the Commission and other interested bodies.

61. His delegation hoped that the date fixed for the Conference on prescription (limitation) in the international sale of goods would not affect the Conference on the law of the sea.

62. His delegation favoured any co-operation among States that would promote training in international trade law, especially for personnel from developing countries. It intended to participate actively in the international symposium to be organized by the Commission in 1975, and supported the remarks on that subject made by the representative of Kenya (*ibid.*).

63. The union for *jus commune* proposed by the French delegation at the fourth session of the Commission was a noble but perhaps distant ideal. However, the modified proposal of the French delegation at the sixth session calling for the establishment of a working group to investigate why it took so long to ratify conventions and what steps could be taken to remedy that situation, deserved serious consideration. It would be advisable for the Secretariat to take a closer look at that proposal and submit a report on it.

64. The Commission was making progress with its work, despite difficulties and limitations. As its Vice-Chairman had observed (1425th meeting), the questions it was tackling called for thorough research and preliminary studies. It was to be hoped that the Commission would not systematically entrust its research and studies to representatives of one geographical region.

65. Mr. VAN BRUSSELEN (Belgium) thanked Mr. Réczei, Vice-Chairman of the Commission, for his introduction of the report under consideration, and congratulated the Commission on the work of its sixth session.

66. With regard to the international sale of goods, the revision of ULIS was one of the most important subjects currently being studied by the Commission. The Working Group on that subject had made substantial progress and his delegation welcomed the Commission's decision to request the Working Group to continue its work and complete it expeditiously.

67. In the case of general conditions of sale and standard contracts, the Commission had had before it a report of the Secretary-General containing a study on the feasibility of developing general conditions embracing a wide scope of commodities and a first draft of a set of "general" general conditions.⁶ While acknowledging the value of that study, his delegation did not think that it should be the subject of priority consideration at the current stage, taking into account the state of the work on ULIS. The Commission should first complete its work on ULIS, so as to prevent the continuation of what seemed to be the current situation, in which the draft set of "general" general conditions overlapped not only with the work on ULIS, but also with some of the general conditions covering various

categories of commodities and goods prepared under the auspices of the regional economic commissions. His delegation also wondered to what extent it was possible to define "general" general conditions, i.e. conditions which would be applicable virtually without distinction to any commodity. In carrying out his work on that subject, the Secretary-General should obtain the close collaboration of the regional economic commissions, while bearing in mind the state of the work on ULIS. It would also be useful for the Secretary-General to submit his study to trade circles in various parts of the world for their views and comments.

68. Turning to the question of international commercial arbitration, he recalled that in response to the Commission's appeal his country was preparing to accede to the Convention of 1958 and the European Convention of 1961. His delegation had always considered it would be useful for the Commission to prepare a model set of arbitration rules which could be used optionally—as provided in the decision by the Commission in paragraph 85 of the report—or on a supplementary basis, as Belgium wished. His delegation therefore hoped that in the near future the Secretary-General would be able to begin the necessary work on that subject; the competent Belgian bodies were prepared to co-operate in that task. However, his delegation did not think it would be materially or practically possible to envisage the unification of national arbitration rules. His delegation did not consider it necessary to establish an international organization of commercial arbitration. Co-operation among existing bodies would seem to be the most appropriate solution, at least at the current stage.

69. The Belgian authorities had carefully studied the problem of training and assistance in the field of international trade law. Belgium would respond favourably, within the scope of its relatively limited possibilities, to the Secretary-General's request that internships be made available for nationals of developing countries. Belgium was again prepared to accept trainees from developing countries in its banking and trade institutions in 1974. The Belgian authorities had also given favourable consideration to participation in the international symposium on the role of universities and research centres in the dissemination and wider appreciation of international trade law, which was to be held in Geneva in 1975.

70. With regard to the Commission's working methods, his delegation did not think it was necessary to increase the number of its meetings or to hold substantially longer plenary meetings. Like other delegations which had already expressed their views on that point, his delegation was fully satisfied with the work the Commission had done thus far and did not think it would be possible to advance much faster in a highly technical field marked by basic differences among different national laws and regulations. The slow but steady evolution of international trade practices would have a greater impact in that respect than an increase in the number of meetings. The most satisfactory solution seemed to be precisely the one adopted by the Commission which had concentrated on a number of priority problems and established working groups dealing with

⁶ A/CN.9/78.

specific subjects, and his delegation would certainly not oppose a proposal to grant one or other of those working groups an extra week of meetings. His delegation felt that the continuity of representation in the Commission and its working groups was essential to the progress of the Commission's work.

71. The CHAIRMAN invited Mr. Réczei, Vice-Chairman of the Commission, who would be obliged to leave New York that evening, to take the floor.

72. Mr. RÉCZEI (Vice-Chairman, United Nations Commission on International Trade Law) thanked those delegations which had congratulated the Commission on the progress it had made and those delegations whose constructive criticism was designed to make its work more effective. The purpose of the annual report of the Commission and the oral explanations which accompanied it was not only to inform the Sixth Committee of the progress of the Commission's work but also to share with it the problems encountered and thus establish a constructive dialogue with a view to obtaining optimum results.

73. It was in that spirit that he had alluded in his introductory statement at the 1425th meeting to some of the circumstances which seemed to condition the Commission's work. A number of delegations had referred to his comments and he wished to make a few preliminary general remarks in that connexion, solely for purposes of clarification.

74. The various suggestions made by different delegations as to how the Commission's working methods could be improved included, first, the suggestion that the Commission should review the priority of the substantive items included in its programme of work and should postpone consideration of matters which were not urgent or even abandon such matters altogether. The Commission had already come to regard certain items as more urgent than others and it had made considerable progress, for example, with international legislation on shipping. So far that policy of extra priority for certain topics had not led to the slowing down of work on other topics, though it might come to that. As to abandoning certain topics, that was a more complex matter than was apparent at first sight, for almost any matter under consideration by the Commission might be considered to be of minor importance by some Governments and of great importance by others. Opinions differed, for example, as to whether ULIS should be modified, a new arbitration convention prepared or the problem of multinational enterprises taken up.

75. As to the work that the Commission should undertake on new subject matters, he believed he was voicing the Commission's opinion in saying that if the Sixth Committee and the General Assembly invited the Commission to add any subject-matter to its agenda, it should do so with the proviso that the Commission would be free to determine what priority to give it. The representative of Norway, with the approval of some representatives, had proposed in the course of the discussion that the Commission should take up the question of the civil liability of producers for their goods. That was no doubt an important issue, but the Commission should be at liberty to decide whether at

the present stage it had enough capacity to put a further item on its agenda.

76. Other suggestions made concerning the number of working groups, the use of outside experts and the number and duration of the sessions of the working groups all involved problems of time and financing, but the Commission would consider them and, if appropriate, would place its suggestions before the committee at its next session.

77. It had been suggested that the number of the members of the Commission should be increased. That, of course, was primarily a matter for the General Assembly to decide. The increase would enable the Commission to draw upon greater resources of legal talent and commercial experience and would ensure the participation of a larger number of States in the Commission's work. However, an increase in the Commission's membership should not lead to an increase in the membership of the working groups.

78. Some delegations had expressed the view that there was no need for a new instrument in international payments. He believed that could be decided only by experts in international trade and banking. However, the question had already been discussed at the very beginning of the Commission's work on the subject. The Commission had first examined the possibility of amending the Geneva Conventions of 1930 and 1931 on bills of exchange and cheques to make them acceptable to those States which, owing to their different legal systems, refused to ratify those Conventions. It had become clear, however, that the difficulties could not easily be overcome, since ratification of or accession to those Conventions would require modification of national laws concerning not only bills of exchange and cheques used for international payments but also those used on a national level. Therefore, the creation of a new type of negotiable instrument for optional use in international trade seemed to be more feasible.

79. Many delegations, particularly delegations of developing countries, had emphasized that the Commission should not encourage the ratification of or accession to regional conventions. Speaking as a jurist, he pointed out that, as everyone knew, national legislation was an obstacle to the unification of the law of international trade and to the development of that trade. The Commission's work had shown that State boundaries were not only geographical but also psychological obstacles. Unification on a world level was a long and difficult task in the field of law. It was incomparably easier on a regional level, for countries of the same region had influenced each other since time immemorial, and the similarities of their cultures and their legal systems facilitated unification of their laws. Whether the Commission should or should not encourage regional unification depended on whether regional law was an obstacle to world-wide unification in the same way as the different national legislations. As yet, the Commission had no answer to that question, for it had not had enough experience and had no convincing theoretical analysis of the problem. Theoretically, it could be supposed that unification of regional laws was much more difficult than that of isolated national laws, since regional legislation was always

the result of co-operation among a number of States which wished to defend the results of their common efforts and their common interests that lay behind it. It could also be held that States which had adopted a common regional legislation had thereby abandoned their narrow legal nationalism and might therefore be more flexible and more willing to accept compromises, once they had realized that their region was not a secluded territory and that they had to adapt to the requirements of the economic relations with countries outside their region.

80. With regard to the question of consensus, which had been criticized as a method that slowed down the Commission's work, it should be noted that, since its establishment, the Commission had considered that it should not resort to voting, because it felt that it was impossible to compel sovereign States by a majority of votes to accept a law. The sovereign State always retained its sovereignty in respect of its internal legislation and was not willing to ratify conventions or uniform laws that had been adopted against its opposition. Consequently, abandoning the system of consensus would mean abandoning the Commission's *raison d'être*, the promotion of unification.

81. As his country's term of office would expire by the end of the current year, he would not be able to inform the Commission personally regarding the discussions in the Sixth Committee. Nevertheless, he was convinced that the Commission would carefully study the report of the Sixth Committee and the comments and proposals made in it.

82. Mr. CEASU (Romania) congratulated the Commission on the results of the work of its sixth session and the activities of its Working Groups and thanked Mr. Rézei, Vice-Chairman of the Commission, for his excellent statement on that work. Romania, which had commercial ties with more than 110 countries, attached the greatest importance to the development of international economic co-operation and considered that the existence of generally accepted legal institutions and instruments was essential for that purpose.

83. His delegation was gratified to note the progress made by the Working Group set up to revise the text of ULIS. The Group had produced a more simplified and systematic text and had eliminated overlapping and inconsistencies. It was to be hoped that the Working Group would be able to strike a balance between the obligations of the seller and those of the buyer and complete its work at an early date.

84. His delegation supported the Commission's decision to continue its work on the preparation of a series of "general" general conditions of sale and standard contracts, which were unquestionably within its terms of reference, since the very purpose of those conditions was to unify the rules and practices in international trade.

85. With regard to the draft uniform law on international bills of exchange and on international promissory notes, his delegation shared the view that the final draft should maintain a just equilibrium between the main systems of negotiable instrument law. It supported the Commission's decision to request the Secretary-General to carry out further work on the

draft uniform law and the use of cheques in settling international payments.

86. His delegation also shared the view of those delegations which had spoken in favour of the conclusion of a new convention on the international regulation of shipping. That was an urgent task, in view of the new developments in that field, both from the practical and the legal points of view.

87. In the matter of international commercial arbitration, his delegation had noted with satisfaction that the Commission had carefully studied the proposals contained in the report submitted by the Special Rapporteur. Arbitration was an essential mechanism in international trade, and any proposal likely to improve it merited attention. The results of the Commission's work on that topic were, unfortunately, limited. While his delegation agreed with the Commission's decision to request the Secretary-General to prepare a draft set of arbitration rules for optional use, it did not believe that it could be concluded *a priori* that it would be impossible to unify certain procedural rules in that field. Perhaps the Commission should reconsider that aspect of the question. His delegation also considered that it would be useful to publish a compilation of arbitral awards or, at least, a review of the trends emerging from such awards, as noted in paragraph 80 of the report. He hoped that the Commission would consider that possibility at a later session, when it was considering what other work it might usefully undertake in that field.

88. With regard to questions relating to training and assistance in the field of international trade law, his delegation supported the Commission's decision to organize an international symposium on the occasion of its eighth session and its decision to arrange, in co-operation with the United Nations Institute for Training and Research, for the organization of seminars in developing countries on international trade law. In Romania, where the teaching of international trade law was being developed under the aegis of the Academy of Economic Sciences, scientific and university circles were taking an increasing interest in that branch of law and in the exchange of information relating to it.

89. His delegation was gratified at the Commission's decision to begin consideration of the question of multinational enterprises, in implementation of General Assembly resolution 2928 (XXVII). The new legal aspects of the existence and development of such corporations and their implications from the point of view of international trade, made a thorough study of the question essential. The Commission should direct its efforts towards determining the most appropriate national and international legal framework for those companies and regulating their activities in such a way as to promote the basic principles of permanent sovereignty over natural resources and international economic co-operation.

90. His delegation also endorsed the Commission's decision to consider ways and means of accelerating the ratification of or the accession to conventions which it had drawn up. The French representative deserved thanks for not having insisted on his initial

proposal, thereby making it possible to arrive at that result.

91. His delegation noted with satisfaction that the Commission's decisions were taken by consensus,

which, in view of the content and the level of the debates in that body, was the best method for dealing with the legal aspects of international trade.

The meeting rose at 6 p.m.

1430th meeting

Tuesday, 6 November 1973, at 3.35 p.m.

Chairman: Mr. Sergio GONZALEZ GALVEZ (Mexico).

A/C.6/SR.1430

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. Miss VEGA (Peru) observed that international trade relations were conducted on a world-wide scale and therefore called for the establishment of generally accepted rules which reflected the situation prevailing in the present-day world and met the special needs of the developing countries. International trade could be one means of closing the gap between the developing and the developed countries.

2. Although her delegation was not a member of the Commission, it closely followed the latter's work and was pleased at the significant results that had been achieved, especially at the last two sessions, which had proved particularly productive. For example, the draft convention on prescription (limitation) in the international sale of goods, approved by the Commission at its fifth session, represented a valuable contribution to the standardization and harmonizing of a broad sector of international trade law.

3. Her delegation endorsed the decision of the Working Group on International Legislation on Shipping in paragraph 53 of the report (A/9017) to follow the approach of the Brussels Protocol of 1968 while at the same time proposing that the language of the Protocol should be revised so as, *inter alia*, to remove ambiguities and to take account of problems presented by containerized transport. The Commission had rightly requested the Working Group to continue its work under its terms of reference.

4. Chapter VII dealt with multinational enterprises, whose economic, financial and political influence was very often free of any control by States. The fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers in September 1973, had recommended that those countries should take joint action with regard to multinational enterprises as part of a global strategy aimed at changing both qualitatively and quantitatively the system of economic and financial relations which kept the developed countries dependent on the industrialized countries. The multinational enterprises could help to promote development, but they could also be harmful to it unless they were made subject to certain international rules. They could not be permitted to exist unless they

respected the legal framework imposed by the country in which they operated.

5. Mr. SCOTT (Jamaica) noted the characteristics of multinational enterprises, as set out in paragraph 113 of the report of the Commission. It should be pointed out in that connexion that the fact that a company's decision-making body had its centre in a particular country did not, in and of itself, imply any obligation to promote the economic or social objectives and policies of the country in question. As often as not, the country in which the decision-making body was located was selected merely for the sake of a tax benefit or a legal advantage of some kind.

6. His delegation felt that the expression "legal problems presented by the different kinds of multinational enterprises" in paragraph 5 of General Assembly resolution 2928 (XXVII) referred to international legal problems. His delegation also did not think that the Committee should be concerned at the present stage with the specific problems that might be presented by a particular type of enterprise, e.g. in relation to mining, since a particular type of multinational enterprise might in fact generate all the problems that were at present envisaged by the Commission. Experience had shown that, regardless of the type of enterprise concerned, the legal problems which arose were not those of municipal law, since within territorial jurisdictions the multinational enterprises usually had the same status as other enterprises, but rather problems of international law deriving from the economic, socio-economic and even political role of the multinational enterprises.

7. His delegation associated itself with the Iraqi, Australian and Canadian delegations in urging that every effort should be directed towards study of the growth of that new phenomenon in the hope that it would be possible in the not too distant future to formulate a uniform law which would provide States that did not have the economic power of the multinational enterprises with legal means of controlling their activities in the interests of all parties concerned. In that connexion, his delegation welcomed the Commission's decision to request the Secretary-General to draw up a questionnaire designed to obtain information on the problems presented by multinational enterprises.

8. Mr. ESSONGUE (Gabon) said that he found the report of the Commission satisfactory. International trade was perhaps the most powerful means of bringing