



Friday, 27 October 1972,
at 10.40 a.m.

Chairman: Mr. Erik SUY (Belgium).

AGENDA ITEM 86

Report of the United Nations Commission on International Trade Law on the work of its fifth session (continued)* (A/8717, A/C.6/L.861)

1. Mr. SAM (Ghana), introducing draft resolution A/C.6/L.861 on behalf of the sponsors, said that it had been felt that it was useful from time to time to recall the objectives and terms of reference of the United Nations Commission on International Trade Law. The second preambular paragraph accordingly referred to General Assembly resolution 2205 (XXI); the report of the Commission on the work of its fifth session (A/8717) bore ample testimony to the fact that it was faithfully carrying out its mandate.
2. In the General Assembly resolutions referred to in the third preambular paragraph, the Commission's work had been commended, and the sponsors hoped that the current year would not be an exception, since the Commission was continuing to make progress.
3. The fourth preambular paragraph was based on the views expressed by representatives in the debate on the Commission's report, which were fully shared by the sponsors, that peaceful and beneficial trade relations between nations based on the rule of law and economic co-operation would, in turn, generate peaceful coexistence, without which it would be extremely difficult to safeguard world peace and promote the general economic and social well-being of all peoples, particularly those in the developing countries.
4. The fifth preambular paragraph was a reminder that the Commission had been fulfilling the provisions of paragraph 10 of General Assembly resolution 2205 (XXI), which requested the Commission to submit a copy of its annual report to the United Nations Conference on Trade and Development for comments.
5. The operative paragraphs followed very closely the pattern of the resolution adopted on the report of the Commission on its previous session. The sponsors felt that, once again, the Committee was pleased with the work done by the Commission and, accordingly, operative paragraph 1 was couched in almost the same language as the corresponding paragraph of the previous year's resolution.
6. For purposes of clarity in a revised draft resolution which would soon be published,¹ the sponsors would replace the words "in the enhancement" in operative paragraph 2 by the words "to enhance the efficiency". The debate on the Commission's report had clearly shown that it had made some progress in its work. It was also clear from the report that the Commission had considered a Spanish proposal concerning its working methods and had agreed, as was stated in paragraph 110 of the report, to reconsider the question of working methods at its sixth session. Operative paragraph 2 was designed to reflect those two points.
7. Almost every speaker had highly commended the Commission on submitting for the Committee's consideration at the current session the draft Convention on Prescription (Limitation) in the International Sale of Goods, and that commendation was reflected in operative paragraph 3 of the draft resolution. In that regard, he announced that a draft resolution on the proposed conference of plenipotentiaries to conclude the Convention² would be submitted in due course.
8. Operative paragraph 4 followed the pattern of the corresponding paragraph of the previous year's resolution and the sponsors hoped that it would be accepted in the same co-operative spirit.
9. A number of representatives had made it quite clear in their statements that the time had come for the Commission to consider the legal problems presented by the different kinds of multinational enterprises. Cogent arguments had been advanced both for and against such a recommendation. Although no generally accepted view had emerged on the subject, the sponsors of the draft resolution had felt that it would be a serious omission if the matter was not brought to the Commission's attention. After a series of consultations on the matter, a compromise formulation had been arrived at and appeared as operative paragraph 5. It was hoped that the Committee would find the compromise acceptable, since it called only for a preliminary study and it had been made quite clear in the debate on the report that the Commission should consider the new proposal in relation to the other items in its programme of work.
10. The sponsors hoped that there would be no opposition to operative paragraph 6, which was taken almost word for word from the previous year's resolution on the Commission's report.

*Resumed from the 1336th meeting.

¹Subsequently circulated as document A/C.6/L.861/Rev.1.

²Subsequently circulated as document A/C.6/L.864.

11. The sponsors were extremely happy to welcome Egypt, Haiti, Singapore, Spain and Uruguay as sponsors of the draft resolution.

12. Mr. KAPLAN (Canada) said that, as a sponsor of draft resolution A/C.6/L.861, his delegation was particularly gratified that operative paragraph 5 extended, in flexible language which the sponsors trusted would prove generally acceptable, an invitation to the Commission to consider the international trade law aspects of multinational enterprises in the light of other studies being taken in various forums. Paragraph 5 left it to the members of the Commission to determine methods to facilitate the carrying out of that new mandate. He recalled that his delegation had suggested at the 1329th meeting that the Commission could most effectively and efficiently embark on that task by appointing a small group of legal experts to make a preliminary review, and recommendations for further study, of the implications of multinational enterprises for international trade law. Such a group of legal experts could review, from the legal viewpoint, the wealth of material that had been produced, or was now in preparation, by Governments, international organizations, and academics on the interrelated aspects of multinational enterprises. A preliminary study of the type he had described would equip the members of the Commission to address themselves to the salient international trade law aspects of multinational enterprises on the basis of a structured analysis of the most up-to-date information available.

13. Although the Canadian suggestion that the Commission should consider the legal aspects of multinational enterprises had been commented upon favourably by many delegations, he was not proposing that the recommendation for the establishment of a group of legal experts should be incorporated specifically in the draft resolution. He requested, however, that its substance should be reflected in the Committee's report and that it should be brought to the attention of the Commission members when the question of multinational enterprises was considered at the Commission's next session.

14. His Government had no particular axe to grind in proposing that the Commission should involve itself in that field. Canada was in a unique situation with respect to multinational enterprises; it was host to many large multinational enterprises and, at the same time, the home-base of a number of Canadian multinational enterprises. Canada found it desirable, as a part of its own industrial strategy, to foster the development of efficient multinationally operating Canadian firms. Accordingly, its position on that subject did not coincide completely with that of any particular category of States. Canada fully recognized the benefits such enterprises could have for international development. It realized also, however, that those enterprises were relatively new international phenomena, the activities of which could be monitored comprehensively, and regulated where necessary, only through an approach which combined not only national and bilateral but also compatible international arrangements.

15. His Government was particularly conscious of the need to ensure that, in taking up the invitation being

extended by the General Assembly, the Commission did not duplicate the work of other international bodies such as UNCTAD, the ILO, and the Economic and Social Council. Canada attached special importance to the Council's recommendation in its resolution 1721 (LIII) that a group of eminent persons should be established to study the role of multinational enterprises and their impact on the process of economic development and believed that the Council, through that group, should play a central role in co-ordinating the work being done within the United Nations family on various aspects of multinational enterprises. What the Canadian delegation wished to ensure, and what it believed was accomplished by operative paragraph 5 of the draft resolution, was that a study of the legal aspects would provide an important input into an interdisciplinary analysis of the role of multinational enterprises. It believed that the Commission was the international forum best suited to study the international trade law aspects. For those reasons, he commended the draft resolution of Australia, Canada and other countries to all delegations.

16. Mr. DUNDAS (Jamaica) said that his delegation welcomed the excellent progress made by the Commission and could support the draft resolution moving approval of its report. Jamaica agreed with the Canadian delegation that a legal study of the effect of multinational enterprises was long overdue and that the Commission was best fitted to understand it. Nevertheless, it considered that more specific terms should be used to describe the types of bodies referred to and that distinction should be made between multinational enterprises, transnational enterprises and multinational corporations. Transnational enterprises were of primary concern to the Committee. Although they had brought benefits to many countries, including his own, it could not be denied that some of them did not always operate in the best interests of all the countries in which they carried on their activities. Accordingly, a study designed to promote a proper international régime for those enterprises by a responsible and independent body such as the Commission would be useful in dispelling suspicion and even eliminating some of the frequent disputes which arose between transnational enterprises and States. The study would of course raise such delicate questions as local control of foreign property and fair, adequate and prompt compensation, but those could no doubt be dealt with effectively under a proper international régime. Furthermore, although such a régime might in some cases weaken the freedom of action of States within their own territories in respect of transnational enterprises, it should not be too difficult to reach a suitable compromise.

17. His delegation could not agree with the view that the Commission's study should necessarily await the report of the Council or that too little was known about transnational enterprises to begin the study. Although he did not wish to propose any amendment, his delegation would have preferred the draft resolution to contain a paragraph recommending the inclusion of the study of transnational enterprises in the Commission's agenda and a list of the different kinds of multinational enterprises, giving priority

to transnational enterprises, to be included in operative paragraph 5.

18. The CHAIRMAN informed the Committee that the draft resolution on the convening of a conference to finalize the draft Convention on Prescription (Limitation) in the International Sale of Goods, referred to by the Ghanaian representative, would be submitted to the Committee for consideration at a later stage.

19. Sir Vincent EVANS (United Kingdom) said that his delegation was pleased to be able to vote in favour of draft resolution A/C.6/L.861, and would be glad to join in its expression of appreciation of the Commission's report on the work of its fifth session and in the commendation to the Commission for the progress made.

20. His delegation attached considerable importance to operative paragraph 5, which related to a point on which it had commented during the debate on the item (1335th meeting) in response to the suggestion made earlier by the Canadian delegation. His delegation had expressed reservations concerning the Canadian suggestion in view of the fact that the question of multinational enterprises was already the subject of studies in a number of other bodies. In particular, the Economic and Social Council had recommended that a group of eminent persons should undertake a general study of the subject and report back to the Council. The inclusion of operative paragraph 5 of resolution A/C.6/L.861 went further than his delegation had felt it advisable for the Sixth Committee to go at the present stage, and the United Kingdom could only accept that paragraph as a compromise between the various views expressed in the Committee. His delegation interpreted operative paragraph 5 as providing only for a study of a very preliminary nature and stressed the importance of avoiding duplication between the work of the Commission and the other bodies dealing with multinational enterprises. Duplication could entail a considerable waste of time and effort both for the bodies undertaking the studies and for the national authorities assisting in the compilation of data for them. The undertaking of several studies concurrently could lead to considerable confusion. It was the understanding of his delegation that no action would be taken on the basis of operative paragraph 5 until the matter had been considered by the Commission at its next session.

21. The Commission should, moreover, consider carefully the question of the definition of the kind of enterprises to be covered by the study. The question of definition was not as simple as it might seem. The United Kingdom authorities had studied that point when the Economic and Social Council had taken up the question, and he recalled that there were some 10 categories of enterprises to which such a study might relate.

22. The first step in the preparation of the Commission's study would be to gather information, and the Commission would presumably send out a questionnaire to Governments. The questionnaire should preferably be drawn up in consultation with the other bodies that were carrying out studies, in order to avoid duplication and to ease the burden

on the Governments to which the questionnaire would be sent.

23. The "further steps" referred to in operative paragraph 5 would presumably be determined in the light of the information obtained from the questionnaire. The Commission should not, however, take a decision on any "further steps" until it could do so in the full light of the other studies, especially that undertaken by the Council. The views expressed in the Committee on the Canadian suggestion, in particular his present statement, should be reflected in the Committee's report.

24. Mr. JELENIK (Hungary) said that his delegation wished to sponsor draft resolution A/C.6/L.861. The text was a faithful reflection of views expressed during the debate. He endorsed the commentary on operative paragraph 5 by the Ghanaian representative in his lucid introduction of the text. The Hungarian delegation, like that of the United Kingdom, thought that the Commission should confine itself to a preliminary study of the legal problems presented by, and the implications of, multinational enterprises. Furthermore, its understanding of the text was that any work undertaken by the Commission would be of a preliminary nature and would remain within the limits of its programme of work. Nor was there any question of the establishment of a new organ.

25. Mr. DEDE (Zaire) said that his delegation supported the Canadian suggestion for the inclusion of a paragraph on multinational enterprises and would therefore join the sponsors of the draft resolution.

26. Mr. BESSOU (France) said that his delegation had already expressed doubts as to whether the Commission was competent to deal with the question raised in operative paragraph 5 of the text before the Committee. He noted that only the legal problems presented by the existence of multinational enterprises were to be examined and that the Commission's study of the issues would be no more than a complement to the work of other bodies. It would be for the Commission itself to determine at a later stage what further measures might be necessary following the preliminary study. On that understanding, the French delegation would not oppose the draft resolution if there was a consensus in the Committee.

27. Mr. KOLESNIK (Union of Soviet Socialist Republics) expressed appreciation of the Ghanaian representative's introduction of the draft resolution, a compromise text in whose preparation he had evidently played an important role. The text was a balanced reflection of the views of the majority of delegations. The same balance was apparent in operative paragraph 5, which was to be understood in the manner described by the Ghanaian representative. The USSR delegation was somewhat concerned that the Canadian representative should have tried to interpret it in a rather different manner—as it was by the suggestion that a small group should be established to study the question of multinational enterprises and their implications.

28. In many United Nations bodies, for instance, the Economic and Social Council, the USSR delegation had supported in principle a study of the influence of multinational monopolies on international trade, including the legal aspects of the problem. Nevertheless, the establishment of a working group within the framework of the Commission would be quite a different matter, particularly as the Commission had not yet begun any study of the issues. His delegation was opposed to putting the cart before the horse. The study of the influence of multinational enterprises on international trade law should be undertaken within the framework of the Commission's existing programme of work. The United Kingdom representative had rightly pointed out that similar studies were already being undertaken in many other bodies. Duplication and unnecessary expenditure must be avoided. The USSR delegation's understanding of operative paragraph 5 was that it merely involved a study of the approach to be taken in dealing with the problem of multinational enterprises and did not involve the establishment of any new working group. He asked that its position should be stated in the Committee's records.

29. The proposal to convene a conference on the draft Convention on Prescription (Limitation) in the International Sale of Goods was a matter directly related to the draft resolution before the Committee. Although his delegation would have no objection to the adoption of the latter, in the light of its interpretation of operative paragraph 5, he doubted whether it would be wise to adopt it before the draft resolution relating to the other proposal had been submitted to the Committee. He asked when such a draft resolution would be introduced.

30. Mr. KAPLAN (Canada) pointed out that his delegation had not intended its suggestion regarding the establishment of a small group of legal experts to be accepted forthwith. It wished only that the matter should be considered by the Commission, at its discretion, during its next session. While he thought such a group could be useful, it was obviously for the Commission to make any decisions.

31. Mr. HYERA (United Republic of Tanzania) said that his delegation, a member of the Commission, was generally satisfied with the way in which it was undertaking its work. Accordingly, it would vote in favour of the draft resolution before the Committee. The text was not controversial and he expressed satisfaction, in particular, with the wording of operative paragraph 2. It was very important that the Commission should endeavour to enhance the efficiency of its working methods. The Commission was growing in importance and new items were being added to its agenda. Furthermore, concern had been expressed lest it should become entrapped in excessively technical matters. In its effort to codify international trade law, the Commission should not address itself unduly to questions which had been overtaken by events.

32. His delegation fully endorsed the view that, as the multinational enterprises had a very serious influence in the economic, social and political sectors of national life, it was

most important that their activities should be closely observed. To that end, action should be taken to study such enterprises with a view to the introduction, at an appropriate stage, of some regulatory provisions to curb the adverse effects of their activities. Even where a State nationalized all private enterprise in its territory, there was no complete safeguard against the influence of multinational enterprises; their influence usually extended to international trade, affecting the developing countries especially. Much as it would welcome a study of the activities of such enterprises, his delegation could agree to the proposal in the draft resolution whereby the issue would be kept alive and the Commission would be kept aware of the necessity of undertaking such a study as soon as possible. His delegation would support operative paragraph 5 as it stood, not because it supported the idea that the study should be delayed but because it was reasonable to defer it until the legal aspects had been discussed. It was only because other bodies such as the Economic and Social Council and the ILO were examining the economic and other aspects of the question that it could accept such a delay.

33. Mr. RAO (India) said that his delegation would like to become a sponsor of the draft resolution, in order to stress its appreciation of the progress made by the Commission and its support of the recommendations made in its report.

34. Mr. SETTE CÂMARA (Brazil) said that, since certain large multinational enterprises were economically much stronger than many States, their impact on international trade relations was considerable. Although such vast corporations were a relatively new phenomenon in international life, definite evidence already existed concerning their operation and their effects on the economic performance, social problems and economic integration of the developing countries. It had therefore become necessary to codify guidelines and rules of behaviour which would help to dovetail the activities of those enterprises into action for the economic advancement of the developing world.

35. Since the Economic and Social Council had decided at its fifty-third session by its resolution 1721 (L.III), to set up a group of experts to carry out a study of that aspect of the problem, his delegation considered that it would be wise to await the outcome of the study. Moreover, OECD and the ILO were devoting much attention to the question and at its third session UNCTAD had adopted some important resolutions on related subjects. Accordingly, the drafting of legal rules and provisions should be held in abeyance until the Commission had all the relevant material at its disposal. It was on that understanding that his delegation could accept the existing text of operative paragraph 5.

36. Mr. SAM (Ghana) welcomed the delegations of Hungary, Zaire and India as sponsors of the draft resolution.

37. Sir Vincent EVANS (United Kingdom), supported by Mr. GÜNEY (Turkey), Mr. KRISHNADASAN (Zambia) and Mr. AMOR (Tunisia), made a motion that voting on the draft resolution should be deferred until the Committee had before it a proposal to convene a conference on the draft

Convention on Prescription (Limitation) in the International Sale of Goods. The Committee's consideration of agenda item 86 could thus be concluded by votes on two related texts.

38. Mr. FLEITAS (Uruguay) and Mr. SAM (Ghana) considered that the two proposals had practically nothing in common and could be voted on independently. In view of the broad support that draft resolution A/C.6/L.861 had received, it would be advisable to vote on it immediately.

39. The CHAIRMAN, after a brief procedural discussion, said that, since there was no formal objection to the United Kingdom representative's motion, he would suggest that voting on draft resolution A/C.6/L.861 be deferred.

It was so decided.

The meeting rose at 12.05 p.m.