



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)

1. Mr. BULAJIĆ (Yugoslavia) said that the work of the United Nations Commission on International Trade Law was of great importance for the promotion of freer international trade, which was a prerequisite for the rapid economic development of the developing countries and of the international community as a whole. As had been clearly recognized by the recent Conference of Foreign Ministers of Non-Aligned Countries in Guyana, international legal norms largely determined the structure of economic decisions and were strongly biased in favour of the interests of the developed states; the economic imbalance between the developed north of the world and the developing countries of the south, from which nearly all members of the non-aligned movement were drawn, was steadily worsening, and the gap in incomes was widening and terms of trade deteriorating to the progressive disadvantage of non-aligned States. The United Nations Conference on Trade and Development (UNCTAD) at its third session had not found a remedy, and the problems were exacerbated by the fact that the developed countries monopolized the decision-making process. The measures recently taken to resolve the world monetary crisis were a case in point. The interests of the developing States had been ignored, and their economies subjected to serious and unnecessary strain. It was in the interests of both developed and developing countries that all should have a hand in decisions designed to solve such problems.

2. Although the Commission's work had never been a focal point of world public opinion, and its reports had not been considered by the Sixth Committee in the controversial atmosphere of a specific political moment, it had been trying since its establishment to hammer out an acceptable basis for the unification of various rules of international trade law. Contemporary international trade law and municipal law offered solutions which varied widely according to the legal systems and the particular interests of States; and rapid results were seldom achieved. Yet the Commission's efforts were beginning to bear fruit. The draft Convention on Prescription (Limitation) in the International Sale of Goods (see A/8717, para. 21) was a significant contribution to the unification of the rules governing the international sale of goods, and the

Commission's commendable endeavours to seek a compromise should be continued. The Yugoslav delegation would submit its detailed comments on the draft at the appropriate time. Given the technical and specialized nature of the text, Yugoslavia supported in principle the decision of the Commission (*ibid.*, para. 20) to convene an international conference of plenipotentiaries on the basis of universality to finalize the draft.

3. His delegation hoped that the Working Group on the International Sale of Goods would continue to make progress with draft compromise texts. The Secretariat's current work on general conditions of sale and its proposed study of the feasibility of formulating general conditions embracing a wider range of commodities than those of the Economic Commission for Europe would contribute to the work of the United Nations Commission on International Trade Law in that important area.

4. Yugoslavia, as a maritime country with a developed merchant marine, had a special interest in international legislation on shipping. The existing rules must be unified and revised. The Conference in Guyana had specifically urged UNCTAD and its subsidiary bodies, as well as the Commission, to accelerate efforts to complete the work started in the field of international legislation on shipping. Yugoslavia therefore welcomed and fully supported the work of the Working Group on International Legislation on Shipping.

5. With regard to international payments, every effort directed to the unification of certain rules was most welcome. The Commission's co-operation with the International Chamber of Commerce (ICC) in that field seemed helpful and should be continued.

6. Stressing the importance of the unification of rules governing legal practice in disputes arising in international trade operations, he commended the Special Rapporteur on international commercial arbitration, whose report¹ was a sound basis for the Commission's future work in that area.

7. The Yugoslav delegation hoped that the organization by international governmental and non-governmental organizations of special programmes of training and assistance for participants from developing countries in matters relating to international trade law would continue and expand. It welcomed the decision that the *Yearbook* should be published annually as a means of disseminating the results of the Commission's work.

¹A/CN.9/64.

8. With regard to the Canadian suggestion made at the 1329th meeting for a study of the conduct of multinational companies, the need for such an undertaking had been recognized by the ILO Conference and the Economic and Social Council, and especially by the Conference of Foreign Ministers of Non-Aligned Countries held at Georgetown, Guyana, where Ministers of Foreign Affairs had condemned the activities of multinational corporations, some of which violated the sovereignty of developing countries and the principles of non-intervention and self-determination. The Georgetown Conference had decided that a committee of experts from developing countries should be convened to devise ways and means of making private foreign investment subservient to national development objectives and to seek a common approach to such investment. The idea of a similar study by the Commission in the context of international trade law deserved consideration.

9. There were areas in which co-operation between the Commission and the International Law Commission would be possible—for instance in the case of the most-favoured-nation clause. The Yugoslav Government would be happy to give the Commission any assistance it might require.

10. Mr. MAURYA (India) said that the Commission's report showed distinct progress in all areas of its activity. It was gratifying that the Commission had been able to submit the text of a draft Convention on Prescription (Limitation) in the International Sale of Goods. The establishment of working and drafting groups appeared to have contributed greatly to the satisfactory completion of the Commission's mandate, and he hoped that its current working procedures would continue.

11. The draft Convention differed on many points from the corresponding Indian law. His delegation had opposed article 21 because it considered that limitation was a matter of public policy, not just a question of the autonomy of parties. But on that and other issues it had accepted compromise solutions in a spirit of accommodation. Its position on the provisions in square brackets had been stated during the Commission's deliberations. The draft was undoubtedly a significant contribution to international trade law and a sound basis for the adoption of a convention by an international conference of plenipotentiaries. His delegation was happy to note the general support for the idea of convening such a conference. It was also generally satisfied with the progress achieved by the Working Group on the International Sale of Goods and hoped that it would in future make even greater progress in its work.

12. The Indian delegation hoped that the Commission would carry out its work on general conditions of sale and standard contracts in consultation with the regional commissions, regional intergovernmental bodies, trading and other organizations, and that standard instruments would soon be evolved for international trade in specific commodities, including those of special interest to the developing countries. The Asian-African Legal Consultative Committee, of which India was a member, was keenly interested in the establishment of such instruments for specific commodities of special interest to Asian and

African countries, and it had recently circulated to its members a "Draft standard form of contract for sale of consumer goods on a FOB/FAS basis" for comment.

13. His delegation fully supported the Commission's decision (*ibid.*, para. 51) regarding the future work programme of its Working Group on International Legislation on Shipping and the fact that the Group was to give priority to the basic question of the carrier's responsibility. It also welcomed the establishment of the Working Group on international negotiable instruments and hoped that it would prepare a final draft uniform law on international bills of exchange and promissory notes with all due speed. The Commission had rightly stressed the desirability in that connexion of close co-operation and consultation with interested international organizations, including banking and trade organizations.

14. The Special Rapporteur's reports on international commercial arbitration were an excellent basis for further work in a field in which India was keenly interested. It had appointed a Committee on Commercial Arbitration; it was a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and had enacted the Foreign Awards (Recognition and Enforcement) Act, 1961, to implement it; and the Indian Council on Arbitration, a private body, encouraged the use of commercial arbitration, informed traders, especially those engaged in foreign trade, of the benefits of arbitration, and advocated the insertion of an arbitration clause in all contracts.

15. Most of the developing countries were notoriously dissatisfied with certain current practices relating to international commercial arbitration. The practice of deciding on the venue of arbitration entirely on the basis of the bargaining power of the parties must be replaced by objective criteria. International commercial arbitration must be developed so that, besides promoting international trade, it inspired confidence in the institution. His delegation hoped that the comments of members of the Commission on the proposals made by the Special Rapporteur in his report² would help in the further clarification of the subject.

16. The Indian delegation was generally satisfied with the Commission's work at its fifth session and fully supported all the recommendations in the report regarding its future work.

17. Mr. DEDE (Zaire) said that his country had for long been the preserve of foreign monopolies, and it had proclaimed its determination to free itself entirely from past commercial bondage. It would no longer be a storehouse for raw materials to be plundered at will. Thus it was asserting its international personality and its role in international trade. In Zaire the rule of political considerations first was replaced by the principle of economic considerations first. Its determination had led it to take steps such as the enactment in 1969 of an investment code, the conclusion of a series of bilateral trade agreements, the drafting of

²*Ibid.*

regional integration agreements, and the formation of a merchant marine and an airline. In addition, it was shortly to inaugurate the largest hydro-electric complex in the world—the Inga dam.

18. Despite all that progress, Zaire was still bound by an old commercial code, based on Napoleonic concepts, which was a heritage of the colonial era. Consequently, it could not but encourage any movement towards the formation of a corpus of international trade law responsive to the exigencies of modern commercial operations and it therefore intended henceforth to play a more active role in the Commission.

19. While recognizing the merits of the Commission's report, his delegation was not yet in a position to discuss the substance of the draft articles on prescription (limitation) in the international sale of goods. It welcomed the fact that many obstacles had been overcome in reconciling concepts deriving from differing economic and social systems, conflicting legal doctrines, and different levels of development. By the way of preliminary comment, his delegation wished to raise a matter of principle with regard to the status of the future convention: whether it was to be mandatory *erga omnes* or to be merely supplemental or interpretative. His delegation felt that relations with specific bilateral agreements or payment procedures under private international law should be based on the actual intention of the parties in accordance with the principle *lex specialis derogat generali*. At the same time, the draft convention should lay down minimum rules and serve as a kind of model for private agreements. Although the latter would be bound by the mandatory provisions of the convention, there was nothing to prevent them from entering into more liberal commitments.

20. With regard to the relative position of certain mechanisms in the study of the draft, the rules on the sale of goods should be dealt with before those relating to prescription.

21. His third point concerned definitions. Before defining the terms "seller" and "buyer", agreement should be reached on the very concept of sale, both as a juridical institution and as an operation under international law. The same applied to the term "goods" and to negotiable instruments in the chapter on international payments.

22. As to the length of the limitation period the provisions of article 8 were open to criticism, and those of article 10 even more so. The same period could hardly be stipulated in the case of action based on a defect detectable when the goods were handed over to the buyer as in that of action arising from a defect not detectable at the time. It would be more just to allow for a longer limitation period in the case of the latter type of claim.

23. His delegation would support the Canadian suggestion concerning the study of the conduct of multinational enterprises. Before resuming control of its own economic affairs, Zaire had had to deal with the same type of tentacular enterprises, whose influence behind the scenes

had been a veritable seven-headed hydra for the institutions of the State.

24. He paid a tribute to the Chairman as a representative of Belgium, the friend and partner of Zaire.

AGENDA ITEM 85

Report of the International Law Commission on the work of its twenty-fourth session (*continued*)* (A/8710 and Add.1 and 2, A/C.6/L.852-856)

25. Mr. MILLER (Canada), introduced draft resolution A/C.6/L.852 on behalf of the sponsors and said that the first, second, third and seventh preambular paragraphs followed the pattern of earlier resolutions on the International Law Commission's reports. The fourth reflected the sense of urgency expressed in General Assembly resolution 2780 (XXVI); the fifth likewise stressed the great urgency of the task; and the sixth noted with satisfaction the draft articles on the protection of diplomats which the Commission had prepared, very quickly and thoroughly, by setting up a sessional working group rather than appointing a special rapporteur.

26. Section I was similar to the corresponding section of resolution 2780 (XXVI), but section II, to which some amendments had been submitted, was specifically concerned with the question of the protection of diplomats. The proposal in paragraph 1 was made in the belief that that would be the quickest and best way of carrying out the urgent task before the Committee. Since the Commission had drafted only 12 articles, a conference on the subject should be relatively short and inexpensive, particularly in view of the Austrian Government's generous offer to act as host. Incidentally, the Canadian delegation would have wished the financial implications of holding the conference in Vienna to have been reflected in document A/C.6/L.853.

27. Operative paragraph 2 realistically mentioned no specific date, since the practical possibilities were as yet unknown, although it seemed likely that if the Austrian invitation was accepted, the conference could be held in July 1973. With regard to paragraph 3, the standard United Nations formula of invitation, the arguments in favour were well known, as were the legal and political difficulties which were likely to arise if it was not used; moreover, the formula did not preclude the possibility that the conference itself might make the convention open to all States through the technique of multiple depositaries. The purpose of paragraph 4 was to stress that the Commission's draft articles would serve as a basis for the conference's deliberations; the comments of Member States and interested intergovernmental organizations would of course be taken into account. Paragraph 5 was a standard clause designed to enable the Secretariat to arrange for the necessary facilities. In that connexion, he drew attention to paragraph 3 (a) (i) of the document on financial implications, which stated that the cost of interpretation would be halved if the conference could be held at

*Resumed from the 1332nd meeting.

Headquarters during the period 25 June–13 July. Paragraph 6 was also a standard clause. With regard to paragraph 7, the time-limit set for comments at the preceding session had been 1 April 1972, but the subject had then been new, and it was now considered unnecessary to leave so much time for comments. Finally, paragraph 8 further underlined the urgency of the question.

28. Expressing his delegation's preliminary views on the amendments submitted, he said that the first Argentine amendment (see A/C.6/L.854) seemed to restate a similar paragraph in resolution 2780 (XXVI) and might perhaps be incorporated in section I of the draft resolution. His delegation had been profoundly disappointed by the Mauritanian amendments (A/C.6/L.855), which would have the effect of postponing the conclusion of a convention indefinitely. The Czechoslovak amendments (A/C.6/L.856), were also disappointing. Canada had supported the suggestion that the convention should be adopted at the current session and could not endorse a whole year's delay, in view of the urgency of the problem and of the wide support expressed during the general debate for action to be taken as early as possible in 1973. There seemed to be no real disagreement concerning the need for rapid action, which was facilitated by the brevity and completeness of the Commission's draft articles and by the Austrian invitation. The United Nations should move quickly towards a convention to protect the inviolability of diplomats and other protected persons, which was a fundamental principle of international law and, incidentally, of personal interest to many representatives. Failure to conclude a convention might have adverse effects on the whole fabric of the diplomatic system and on international relations as a whole. If diplomats had to be lodged in fortresses or were exposed to increasing danger, their freedom of opinion and their value to both the receiving and the sending State would be so depreciated that in some cases they might be withdrawn, thus directly affecting everything from consular, political and economic relations to trade, aid and technical assistance. To avoid such consequences, the Committee should adopt a draft resolution setting a definite date for a plenipotentiary conference on the subject.

29. Mr. SPÁČIL (Czechoslovakia) introduced his delegation's amendments (A/C.6/L.856) to draft resolution A/C.6/L.852, but at the same time gave notice that it would submit a revision³ of them so that paragraphs 1 and 2 of the draft resolution would refer to comments by States, specialized agencies and interested international organizations.

30. The Czechoslovak delegation welcomed the practically unanimous approval of the Commission's work generally and of the draft articles on the protection of diplomats. Most speakers in the general debate had agreed on the urgent need for a convention on the subject, and the sponsors of the draft resolution were to be congratulated on their initiative. The only difference of opinion related to the method of adopting the convention. The procedure proposed by the sponsors

had two main shortcomings: it failed to place the question in the context of related problems under consideration in the General Assembly; and despite the Canadian representative's assurances, convening a conference to examine a dozen generally acceptable draft articles was an unduly costly exercise. His delegation therefore proposed that the comments of Governments and organizations should be sought and that the convention should then be adopted at the twenty-eighth session. The delay would not in fact be great, since comments could hardly be expected much earlier than July, very few having been received in response to the preliminary request. The Sixth Committee could adopt the draft very quickly. Perhaps the Canadian representative's objections might be met by stating specifically that States should sign the convention at the twenty-eighth session.

31. His delegation attached great importance to the comments of Governments, since the persons concerned were government agents, and also to the context of the preparation of the convention. The problem of the protection of diplomats was closely connected with that of acts of terrorism, which was on the agenda of other Assembly organs, whose deliberations must be taken into account in drafting the convention. The financial aspects could not be overriding in such an important matter, but the need for economy should not be underestimated. With regard to the adoption of conventions in the General Assembly, the Committee had set the precedent of adopting the important Convention on Special Missions in 1969. In any case, his delegation considered that the door was still open for negotiations which might lead to a consensus.

32. Mr. REBAGLIATI (Argentina) introduced his delegation's amendments (A/C.6/L.854) to draft resolution A/C.6/L.852. His delegation had modified those amendments and would submit a revision⁴ as soon as possible, whereby it would propose that the order of paragraphs 3 and 4 of the draft resolution be reversed and that the new paragraphs proposed in its amendments be added after paragraphs 4 and 6, not before, as indicated in document A/C.6/L.854. The purpose of the amendments was to fill a gap in the draft resolution. The law on non-navigational uses of international watercourses had been referred to specifically in section 1, paragraph 5, of General Assembly resolution 2780 (XXXVI) and in chapter V, part A, of the Commission's report (A/8710 and Add.1 and 2), and one of the Argentine amendments was merely intended to restate the wording of paragraph 5 of resolution 2780 (XXXVI). With regard to the other amendment, a study had been requested of the Secretary-General under paragraph 2(s) of General Assembly resolution 2669 (XXV) but had not yet been submitted, although it was no doubt in progress. The amendments therefore contained no controversial points, but would improve section I of the draft resolution.

33. Mr. CASTRÉN (Finland) said that his delegation wholeheartedly supported the Argentine amendments, as orally modified. His Government was particularly interested

³Subsequently circulated as document A/C.6/L.856/Rev.1.

⁴Subsequently circulated as document A/C.6/L.854/Rev.1.

in the development of the law relating to the non-navigational uses of international watercourses, and it was on Finland's initiative that United Nations bodies had resumed consideration of that topic. He hoped that the Commission would accord it first priority and, if possible, appoint a special rapporteur for it at its next session. He hoped also that the Secretariat would continue to compile documentation on the question as a whole and complete the requested study as soon as possible, so that the special rapporteur to be appointed could begin his preliminary work immediately.

34. Mr. TABIBI (Afghanistan) expressed his delegation's appreciation to the Commission for its preparation of the draft articles on the prevention and punishment of crimes against diplomatic agents and others. His delegation generally supported the aim and purposes of the draft articles, although some of them required careful study and, in certain cases, revision in particular articles 2, 4 and 6. A clear distinction must be made between political crimes and ordinary crimes, and the principle of territorial asylum should not be jeopardized.

35. In view of the urgency of the problem, it was unquestionably desirable that a convention on the subject should be concluded as soon as possible. In view of the urgency of the question, the Commission had set aside its traditional procedure of appointing a special rapporteur for the topic and had assigned to a Working Group the task of preparing the draft articles. From the lively debate that had taken place in the Committee, there appeared to be various schools of opinion on the next steps to be taken. He hoped that it would be possible to find a compromise between them. The text prepared by the Commission was not a lengthy one, and a conference lasting two or three weeks would probably suffice to bring it into shape. He appreciated the Austrian Government's offer to act as host to a conference for that purpose. His delegation was consulting with other delegations, in particular that of Yugoslavia, with a view to submitting a compromise proposal in the near future.

36. With regard to the Argentine amendments, he agreed that the law of non-navigational uses of international watercourses was of great importance; it was, incidentally, on the agenda of the Asian-African Legal Consultative Committee. While he could support the Argentine amendment concerning a recommendation to the Commission, he felt that it should be left to it to set its own priorities. The question might be left open and the substance of the Argentine amendments included in the Committee's report, so that the Commission could take due note of them.

37. Mr. LENNKH (Austria) said that his delegation regretted that document A/C.6/L.853 made no reference to the Austrian Government's offer to provide conference facilities at Vienna. The Austrian delegation had made a tentative offer to that effect (1324th meeting) when commenting on the report of the Commission. Although he had as yet received no specific instructions from his Government on the subject, he nevertheless felt that it would be prepared to follow the normal procedure of

assuming any additional costs involved in convening the conference at Vienna rather than in New York or Geneva. If the conference was held at Vienna, the earliest possible date would be between 15 July and 31 August 1973. Provisional arrangements had also been made for convening it at a later date. In his delegation's view, the most important thing was that such a convention should be concluded, and that could best be done by convening a plenipotentiary conference.

38. Mr. REBAGLIATI (Argentina), replying to the statement by the representative of Afghanistan, said that the amendments contained in document A/C.6/L.854 would not prejudice the Commission's decision regarding the priority to be given to the topic of the law of the non-navigational uses of international watercourses. His delegation would welcome any suggestions that would further clarify its text, and it hoped that no wrong interpretation would be placed on it.

39. Mr. DE AVELLAR (Brazil) said that his Government had always maintained that the individuality of each hydrographic basin, its intrinsic peculiarities and the nature of its problems called for solutions appropriate to that particular basin, a fact that argued against any effort to find a uniform model for adequate universal action.

40. The most obvious solution was co-operation among the States in the same zone, as normally occurred in navigation. Each had sovereign rights to dispose freely of its own natural resources and to carry out its plans for development. Such co-operation between States, and the principle of responsibility, implied that each State must faithfully observe the obligation not to cause significant damage to other States. If it did so, its responsibility was to make restitution for such damage as duly proven and measured. His delegation also recognized that co-operation between States in the field of the environment, including co-operation for the implementation of principles 21 and 22 of the Declaration of the United Nations Conference on the Human Environment,⁵ would be effectively achieved if public knowledge was provided concerning the technical data on the work to be carried out by States within their national jurisdiction with a view to avoiding significant harm to the human environment of the adjacent area.

41. At the twenty-fifth session, the Brazilian delegation in the Committee (see 1232nd meeting) had opposed referring the question of international watercourses and their non-navigational uses to the Commission for study and codification. It maintained its view and, accordingly, did not support the Argentine amendments.

42. Mr. CORREA (Mexico) proposed that the Committee postpone its afternoon meeting in order to allow sponsors of amendments to draft resolution A/C.6/L.852 the time to prepare a joint text.

It was so decided.

⁵See A/CONF.48/14 and Corr.1.

43. Mr. VELASCO ARBOLEDA (Colombia) said that document A/C.6/L.853—statement of administrative and financial implications of the draft resolution contained in document A/C.6/L.852—contained no reference to the cost of preparing summary records for a conference of plenipotentiaries. His delegation, as a sponsor of draft resolution A/C.6/L.852, felt that if a conference was held summary records should be provided, and he requested information from the Secretariat concerning the authorization required and the cost involved.

44. Mr. RYBAKOF (Secretary of the Committee) said that the Colombian representative was correct in assuming that the estimated costs set out in document A/C.6/L.853 did not cover the cost of drawing up, translating and reproducing summary records. Draft resolution A/C.6/L.852, to which that document related, contained no provision concerning summary records. As representatives were aware, paragraph 10 (b) of General Assembly resolution 2538 (XXIV) laid down the rule that summary records could be provided for a conference only if they were specifically authorized by the enabling resolution. He was informed that the order of magnitude of the cost of providing summary records, if they were specifically authorized, could be tentatively estimated at \$95,000.

45. With regard to the venue of the conference, it was traditional United Nations practice for the host country to pay the difference entailed by holding a conference away from New York or Geneva. Document A/C.6/L.853 took due account of the request in section II, paragraph 2, of document A/C.6/L.852 that a conference should be convened as early in 1973 as practicable, and in paragraph 2 noted that "it would appear that the earliest practicable date in 1973 for the convening of the conference would be 2 April", so that the July date referred to by the Austrian representative was feasible.

46. With regard to the requested study on the legal problems relating to the non-navigational uses of international watercourses, the Secretariat had sent a circular letter

to States, and had so far received only a few replies. Work was proceeding on the basis of those replies, with a view to the preparation of the requested study.

47. Mr. CASTILLO ARRIOLA (Guatemala) said that at the previous session of the General Assembly his delegation had voted in favour of resolution 2780 (XXVI) requesting the Commission to study the topic of the prevention and punishment of crimes against diplomatic agents and other internationally protected persons. His country had had bitter experience in that area and was convinced of the urgency of the problem. He congratulated the Commission on its able presentation of the draft articles on the topic. He supported draft resolution A/C.6/L.852, the adoption of which should ensure that the problem received the earliest possible consideration. His delegation could also support some of the amendments submitted, in particular that of Argentina. It might be helpful to try to draft a joint text.

48. The CHAIRMAN noted that Guatemala had joined the sponsors of draft resolution A/C.6/L.852.

49. Mr. MILLER (Canada) said that he assumed responsibility, on behalf of the sponsors of draft resolution A/C.6/L.852, for not having included in that document a provision for summary records for the proposed conference. His delegation felt that it was essential that such a conference should have summary records. The estimated cost might seem large, but it would be fully justified. The drafting of the convention in the Sixth Committee would also involve the cost of summary record coverage. He would consult with the other sponsors of the draft resolution with a view to having a revision⁶ in which a new paragraph providing for summary record coverage of the conference would be inserted.

The meeting rose at 1.05 p.m.

⁶Subsequently circulated as document A/C.6/L.852/Rev. 1.