

postponed until noon to enable members of the Committee to hear the address to be given by the President of Mexico to the General Assembly.

71. Mr. KRISHNADASAN (Swaziland) supported the proposal of the representative of Argentina and proposed that a similar procedure should be adopted for the afternoon meeting, to enable members of the Committee to hear the statement of the President of Cyprus to the General Assembly.

72. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to postpone the opening of the following day's meetings until the Presidents of Mexico and Cyprus had addressed the General Assembly.

It was so decided.

73. Mr. ROSENSTOCK (United States of America), speaking in a purely personal capacity, said that, while he did not disagree in the least with the decision just taken by the Committee, he hoped that it would not be taken as a general precedent. The Committee had always considered itself as dealing with technical questions and as being able to continue its deliberations concurrently with the debate in the plenary. If the Committee adjourned its proceedings whenever a Head of State addressed the General Assembly, it might find itself very short of time at the end of the session.

74. Mr. OSMAN (Somalia) disagreed with the views expressed by the representative of the United States. The visit of a Head of State to the United Nations to address the General Assembly was a matter of general interest and it was important that members of the Committee, as representatives of their respective countries, should be present when such an address was delivered.

75. Mr. GÜNEY (Turkey) fully supported the view expressed by the representative of the United States. From a practical point of view, it was not possible for the Committee to adjourn whenever a Head of State came to address the General Assembly. His observations should not be taken, however, as reflecting on the decision just taken by the Committee.

76. The CHAIRMAN said that the decision taken by the Committee was not intended to set a precedent, but merely related to the following day's meetings.

77. Mr. MAÏGA (Mali) said that it was the practice of all the Main Committees to adjourn whenever a Head of State took the floor in the General Assembly. The same respect should be shown to all Heads of State, regardless of the country they represented. The Committee was not setting a precedent, but continuing an established practice.

78. Mr. BOOH BOOH (United Republic of Cameroon) agreed that whenever a Head of State visited the United Nations, he should be treated with appropriate courtesy. That was the procedure which had been decided upon by all the other Main Committees and he saw no reason why the Sixth Committee should be an exception.

79. Mr. FUENTES IBAÑEZ (Bolivia) disagreed with the views expressed by the representative of the United States. He informed the Committee that the President of Bolivia was to address the General Assembly on Wednesday, 8 October, and he would be very gratified if members of the Committee could attend the debate on that day. Such a practice was very proper.

The meeting rose at 4.55 p.m.

1532nd meeting

Tuesday, 7 October 1975, at 12.10 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1532

AGENDA ITEM 110

Report of the United Nations Commission on International Trade Law on the work of its eighth session (*continued*) (A/10017, A/C.6/L.1016, A/C.6/L.1017)

1. Mr. RAKOTOSON (Madagascar) thanked the Chairman of the United Nations Commission on International Trade Law (UNCITRAL) for his clear and comprehensive introduction of its report.

2. His delegation had studied with great interest the report of UNCITRAL on the work of its eighth session (A/10017). Madagascar, which was situated at a cross-roads, had a particular interest in expanding its trade with as many

countries as possible and it was therefore especially interested in the unification and simplification of the rules and practices of international trade law.

3. The Working Group on the International Sale of Goods had rightly drawn up provisions which were sufficiently flexible to prevent the automatic imposition of penalties in the event of lack of conformity of goods, delays in declaring sales contracts avoided and non-performance of the obligations of one party. His delegation approved UNCITRAL's decision, which was reproduced in paragraph 17 of the report, requesting that the draft Convention on the International Sale of Goods should be transmitted to Governments and interested international organizations for study and comments.

4. With regard to the general conditions of sale and standard contracts, the efficiency of those instruments seemed to depend on two conditions, namely, that they should be in harmony with the provisions concerning the international sale of goods and that they should apply to as wide a range of commodities as possible. The work in that sphere was complex and might well duplicate the work on uniform rules for sales. However, his delegation considered that it should continue and it approved UNCITRAL's decision, reproduced in paragraph 25 of the report, to the effect that the Secretary-General should make inquiries about the practical need for such conditions and should establish, for purposes of consultation, a study group composed of representatives of regional commissions, trade associations, chambers of commerce and similar organizations from different regions. The Convention on the International Sale of Goods and the rules on the formation and validity of contracts of sale should be considered at a single conference.

5. With regard to international payments, the work on preparing uniform simplified rules on the subject was bound to contribute to the development of trade. It would therefore be desirable for the Secretariat and the Working Group on International Negotiable Instruments to continue their research on the possible use of cheques for settling international payments. With regard to bankers' commercial credits, commercial letters of credit played an important role in payments for international trade transactions. The role of bank guarantees was also considerable, especially for developing countries. Since the most recent edition of the "Uniform Customs and Practice for Documentary Credits" of the International Chamber of Commerce (ICC) had not been made available to members of the Committee, his delegation could not express an opinion either on that text or on the decision of UNCITRAL, reproduced in paragraph 41 of the report, recommending that the 1974 revision should be used, as from 1 October 1975, in transactions involving the establishment of a documentary credit. Co-operation between UNCITRAL, ICC and other banking and trade institutions on the question of bank credits and guarantees, was bound to be fruitful.

6. Since Madagascar had no merchant fleet engaged in international carriage, his delegation attached particular importance to the rules governing the responsibility of ocean carriers. For that purpose documents other than bills of lading should be given the same status as the latter, and the responsibility of ocean carriers and loaders should be increased by keeping the grounds for exoneration from liability as limited as possible. The Working Group on International Legislation on Shipping had performed a useful task in completing the text of a draft Convention on the Carriage of Goods by Sea.

7. With regard to arbitration, he said that institutionalized arbitration should not exclude the possibility of "non-administered arbitration". Even in the case of the former, the parties should be allowed some latitude with regard to procedure. On a similar issue, his delegation suggested that a provision should be included in article 23 of the preliminary draft set of arbitration rules (see A/10017, annex I) authorizing the parties to nominate experts, or if necessary counter-experts, by agreement after the delivery of the report of the experts appointed by the arbitrators. It

feared that article 31, which provided that the arbitrators should fix their fees themselves would make arbitration too costly. His delegation had no special preference for institutionalized arbitration over *ad hoc* arbitration. However, *ad hoc* arbitration seemed to offer more advantages at the practical level, as long as it was not too costly.

8. With regard to multinational enterprises, it was to be hoped that progress in the work of the Commission on Transnational Corporations of the Economic and Social Council would be such as to enable UNCITRAL to resume its work on the subject as soon as possible.

9. Mr. HAFIZ (Bangladesh) congratulated the Chairman and officers on their election and welcomed the three new Member States, the Republic of Cape Verde, the Democratic Republic of Sao Tome and Principe, and the People's Republic of Mozambique.

10. Bangladesh, whose trade was heavily dependent on international shipping, attached great importance to UNCITRAL's efforts to promote the harmonization and unification of international trade law. His delegation thanked the Chairman of UNCITRAL for his excellent introduction of the report and expressed its satisfaction with the work carried out by UNCITRAL and its working groups.

11. The draft Convention on the International Sale of Goods prepared by the Working Group on that question was very useful. The final draft should be completed as expeditiously as possible.

12. On the question of international negotiable instruments, he said that the Working Group concerned should incorporate uniform rules applicable to international cheques in the final draft uniform law on international bills of exchange and international promissory notes.

13. His delegation was gratified to note that UNCITRAL had given high priority to the work of the Working Group on International Legislation on Shipping and especially to the revision of the International Convention for the Unification of certain Rules relating to Bills of Lading, completed in Brussels in 1924. The draft Convention on the Carriage of Goods by Sea was important in that connexion. The provisions of the Brussels Convention was out of date and provided no solution to the problems of the trading communities in the developing countries, which should be taken into consideration in finalizing the legislation on shipping. It would be desirable for a convention on bills of lading to be signed before 1978.

14. The question of liability for damage caused by products intended for or involved in international trade was of vital importance to the buyer country. UNCITRAL should therefore provide for reasonable protection for the consumer in the final draft of the uniform rules governing the international sale of goods.

15. His delegation noted with satisfaction that the text of the "Uniform Customs and Practice for Documentary Credits" had been revised by ICC.

16. On the subject of international commercial arbitration, it should be noted that although civil proceedings for

the settlement of disputes between shippers and sellers on the one hand and buyers on the other were lengthy and unsatisfactory, the preliminary draft set of arbitration rules prepared by UNCITRAL also contained many provisions which would cause delay in arbitration proceedings. They should therefore be revised in such a way as to remove causes of delay. Moreover, the interests of the developing countries should be taken into consideration in revising the preliminary draft.

17. Training and the dissemination of knowledge of international trade law certainly contributed to the development of international law. That type of activity was, unfortunately, still very limited in the developing countries; there was a need to hold more seminars and to train more young jurists from those countries. UNCITRAL's efforts in that field were laudable, and his delegation was gratified to note that generous contributions had been made for that purpose by the Governments of Belgium, Austria, Norway, Sweden and the Federal Republic of Germany. He suggested that centres for research and training in international trade law should be established in the developing countries in order to enable the countries of the third world to benefit from the knowledge acquired by the developed countries in that field.

18. In view of the important role to be played by the smaller States and developing countries in shaping a new international economic order, UNCITRAL and its working groups should give priority to the problems of those countries in the codification of international trade law.

19. Mr. STARČEVIĆ (Yugoslavia) said that the work of UNCITRAL should be viewed within the general context of activities aimed at changing the existing system of international economic relations and establishing a more equitable international economic order. The sixth and seventh special sessions of the General Assembly had shown that the international community had embarked on a course which necessarily led to changes in economic relations. At the sixth special session, objectives had been set and, although the results achieved at the seventh special session were still a far cry from what the developing countries had proposed and rightly expected, the document adopted by consensus at that session (General Assembly resolution 3362 (S-VII)) provided a framework for further important action. As his country's representative had stated at the current session of the General Assembly (2360th plenary meeting), the General Assembly should request all organizations of the United Nations system to accord, in their activities, the highest priority to the questions within their competence referred to in the document of the seventh special session.

20. The structure of international trade and the conditions in which it operated were of great importance in the context of the forthcoming changes in international economic relations. In order to accelerate the economic development of the developing countries, international trade had to be made easier, freer, more equitable and less restrictive. UNCITRAL's activities consisted precisely of reducing or eliminating through progressive harmonization and unification of international trade law the legal obstacles hampering international trade. In that way UNCITRAL was participating in the fulfilment of the

general tasks laid down by the sixth and seventh special sessions of the General Assembly—which did not mean, however, that its activities could not be made still more effective.

21. So far UNCITRAL had concentrated on questions which were vital to international trade and had achieved notable results in a relatively short time. UNCITRAL should, as it had done so far, direct its work towards both the adoption of new rules and the revision of existing rules. All the instruments so far adopted had been the result of the work of international bodies in which the developed countries had played a dominant role. UNCITRAL should also continue and intensify its co-operation with other international bodies and organizations dealing with the same problem.

22. He thanked the Chairman of UNCITRAL for his excellent introduction of the report under consideration and stressed the important role played by the working groups at the most recent session of UNCITRAL. His delegation would study with interest the final text of the draft Convention on the International Sale of Goods, since the adoption of that basic document would facilitate the adoption or revision of other documents in that field.

23. His delegation was gratified by the work on preparing uniform rules applicable to various aspects of international payments. In that field, progress should be gradual, since the questions involved were often very complex and the rules applied by individual countries or groups of countries were often very different.

24. As a maritime country with a large merchant fleet, Yugoslavia attached special importance to international legislation on shipping. That matter was also of great importance to the developing countries, as a number of international conferences had shown by demanding that the United Nations Conference on Trade and Development and its subsidiary bodies, and UNCITRAL, should speed up their work in that field. Consequently, his delegation was pleased to learn that the enlarged Working Group on International Legislation on Shipping had completed the second reading of the draft Convention on the Carriage of Goods by Sea. That draft was clearly a considerable advance on the Brussels Convention of 1924 and its Protocol of 1968.

25. The legal problems arising in connexion with the activities of multinational enterprises were among the most complex and most delicate before the United Nations. Because of the impact of the activities of transnational corporations on the economies of developing countries and because of certain reprehensible practices of those corporations, some of which disregarded the laws and regulations of the developing countries in which they operated, those problems had received the attention of the United Nations and of working bodies of the non-aligned countries. Efforts had been made to find ways of making private foreign investment subservient to national development objectives and to establish common standards governing the activities of the transnational corporations. The political, legal, economic and other aspects of the problem made it imperative to approach it very carefully and to ensure that there was close co-operation between UNCITRAL and the

two bodies set up by the Economic and Social Council, namely the Commission on Transnational Corporations and the Information and Research Centre on Transnational Corporations. Until such time as those bodies were organized and in a position to reach conclusions, UNCITRAL might begin its own studies of certain problems, without necessarily confining itself to those mentioned in the Secretary-General's report on the question.¹

26. The question of liability for damage caused by products intended for or involved in international trade was becoming increasingly important as a result of growing concern for consumer protection. The work of UNCITRAL on international commercial arbitration and, in particular, on the preparation of a draft set of arbitration rules for optional use in *ad hoc* arbitration also deserved attention.

27. He was glad to note that the programmes of training and assistance in the field of international trade law were continuing and he expressed the hope that the programme of symposia could be expanded still further through contributions from Governments, international organizations and other sources.

28. Yugoslavia, although not currently a member of UNCITRAL, had followed its work with keen interest and considered the results achieved so far to be satisfactory. His delegation believed, however, that UNCITRAL could play a more active role in other fields as well, so that it could make a greater contribution to the establishment of a new international economic order.

29. Success had been experienced by UNCITRAL in resolving certain specific problems of international trade law without straying into the area of political or legal-political discussions. As UNCITRAL appeared to have overcome successfully the difficulties of that first phase, it might be asked to consider problems of a more general nature, such as the preparation of uniform rules for the investment of capital or the transfer of know-how and technology from developed to developing countries, thereby contributing to the creation of better and more equitable conditions for the conclusion of agreements. Of course, those questions also involved political considerations, in addition to their purely legal aspects, but the eight years of UNCITRAL's existence and the practical results it had achieved showed that it was capable of dealing competently with the most complex problems. Solving the legal aspects of the macro-problems of international trade would undoubtedly contribute to solving the non-legal aspects of those problems. UNCITRAL would in that case assume the role of "international legislator" for questions of vital interest for the promotion of international trade and for narrowing the gap between the developed and the developing countries.

30. Mr. GÜNEY (Turkey) thanked the Chairman of UNCITRAL for his excellent introduction of the report and welcomed the significant progress made by the Commission at its eighth session.

31. The Working Group which had been commissioned to draft an international instrument on the international sale

of goods had reached complete agreement on the texts dealing with the matters covered in articles 1 to 83 of the Uniform Law on the International Sale of Goods, which contained a total of 101 articles. His delegation believed that the convention on sales and the rules on the formation and the validity of contracts of sale should logically be considered by a single conference at some future date.

32. General conditions of sale and standard contracts were another aspect of the law of sales on which UNCITRAL was currently working. The draft set of general conditions of sale submitted by the Secretary-General² required further work and research in order to make them applicable to a wide range of commodities. The study group established for that purpose would facilitate discussions on the subject and might remove the doubts expressed at the most recent session of UNCITRAL.

33. In the field of negotiable instruments, consideration was being given to the preparation of a final text of a draft uniform law on international bills of exchange and international promissory notes and to the desirability of preparing uniform rules applicable to international cheques. His delegation would therefore confine itself to taking note of the progress made so far by the Working Group.

34. With regard to bankers' commercial credits, UNCITRAL had considered the 1974 revision of the text of the "Uniform Customs and Practice for Documentary Credits". His delegation was pleased to note that ICC had also co-operated effectively with countries whose chambers of commerce were not affiliated to it. UNCITRAL's recommendation that the 1974 revision should be used, as from 1 October 1975, in transactions involving the establishment of a documentary credit was timely, since ICC had made the 1974 revision more acceptable than the 1962 version.

35. It had been concluded by UNCITRAL that the two studies on security interests in goods, that were referred to in paragraph 48 of the report, were highly useful but incomplete. They should therefore be continued or completed.

36. His delegation noted with satisfaction that the Working Group on International Legislation on Shipping was to finalize the draft convention on the responsibility of ocean carriers of goods for cargo. In the discussion of the draft convention in the light of the comments of Governments and interested organizations, the complexity and importance of the subject would become evident.

37. With regard to international commercial arbitration, the preliminary draft set of rules submitted by the Secretary-General should be revised in the light of the comments made at the latest session of UNCITRAL and the impracticable innovations it contained should be eliminated.

38. The question of multinational enterprises was also under consideration by the Commission on Transnational Corporations and the Information and Research Centre on Transnational Corporations, the two bodies established by

¹ See A/CN.9/104.

² See A/CN.9/98.

the Economic and Social Council. His delegation therefore endorsed UNCITRAL's decision to wait until the issues relating to multinational enterprises had been more clearly identified, but at the same time to maintain the item on its agenda.

39. His delegation noted with satisfaction that a symposium had been held on the role of universities and research centres with respect to international trade law and was pleased that another symposium was scheduled for

1977. It endorsed UNCITRAL's decision to add no new items to its programme of work.

40. The suggestion made by the representative of Austria (1529th meeting) to the effect that UNCITRAL might in future hold some of its meetings in Vienna merited careful consideration.

The meeting rose at 1 p.m.

1533rd meeting

Tuesday, 7 October 1975, at 4.45 p.m.

Chairman: Mr. Frank X. J. C. NJENGA (Kenya).

A/C.6/SR.1533

AGENDA ITEM 110

Report of the United Nations Commission on International Trade Law on the work of its eighth session (*continued*) (A/10017, A/C.6/L.1016 and A/C.6/L.1017)

1. Mr. MUHAMMAD (India) welcomed the delegations of Cape Verde, Sao Tome and Principe and Mozambique to the Committee.

2. He thanked the Chairman of the United Nations Commission on International Trade Law (UNCITRAL) for his comprehensive account of its work at its eighth session. There was a growing appreciation among Members of the United Nations of the importance of the work of UNCITRAL. India was a member of UNCITRAL and had always participated actively in its deliberations. The subjects dealt with by it were of a highly technical nature and, although not all developing countries yet possessed sufficient experts in trade law, it was to be hoped that they would take an increasing interest in the work of UNCITRAL. The report of UNCITRAL (A/10017) occupied a very important place in the Committee's agenda.

3. His delegation was generally satisfied with the manner in which UNCITRAL had implemented its mandate as set out in General Assembly resolution 2205 (XXI). However, it was important that UNCITRAL should not see itself purely as a drafting body. It should allow itself to be exposed to the shared expectations of the majority of the international community in the area of international trade co-operation. International law in that area should evolve according to the requirements of contemporary international economic life. The United Nations had recognized the imperative need to redress the economic imbalance between developed and developing countries and his delegation sincerely hoped that, in order to achieve just and equitable solutions, UNCITRAL would take due account of the principles of the Declaration and Programme of Action on the Establishment of a New International Economic Order contained in General Assembly resolutions 3201 (S-VI) and 3202 (S-VI), the Charter of Economic Rights

and Duties of States in resolution 3281 (XXIX) and also resolution 3362 (S-VII).

4. The consensus procedure adopted by UNCITRAL in reaching its decisions had considerably enhanced the usefulness of its work and it was to be hoped that UNCITRAL would follow the same procedure in the future. Furthermore, since the success of the working groups depended to a large extent on the background work done by the Secretariat, all facilities should be provided to enable the Secretariat to continue its preparation of research studies and background papers for the benefit of UNCITRAL. The participation of observers from governmental and non-governmental organizations and specialized agencies with a wide variety of practical experience in the field of international trade law had also been of benefit to UNCITRAL which should continue to encourage consultation with such expert organizations. Another practice which had helped to accelerate its work and which should be continued was the establishment of working groups to deal with different topics.

5. Referring to the programme of work of UNCITRAL, he said that, while the decision not to add any new topics to the existing programme of work until it had completed the major tasks on which it was already engaged was basically sound, UNCITRAL should keep under review the identification of new areas of study for its programme of future work.

6. The regulation of the activities of multinational enterprises was of vital importance to developing countries. Since the legal issues in respect of multinational enterprises were closely interconnected with those of an economic, social and political nature, UNCITRAL had acted wisely in deciding not to finalize its programme of work in that field pending the identification by the Commission on Transnational Corporations of specific legal issues that would be susceptible to action by UNCITRAL. It was to be hoped that that Commission and UNCITRAL would maintain a system of consultation so as to avoid duplication of work. His delegation was pleased to note that UNCITRAL had