



Chairman: Mr. Erik SUY (Belgium).

Statement by the representative of Chile

1. Mr. MIMICA (Chile), speaking on a point of order, recalled that at the 1331st meeting he had referred to two recent instances in which Chile had been the victim not only of economic action but also interference in its domestic political affairs by mutinational enterprises; in that connexion, he had mentioned the International Telephone and Telegraph Corporation (ITT) and the Kennecott Copper Corporation. He was disturbed to note that the press release for that meeting wrongly attributed to him the very serious statement that ITT had carried out certain subversive activities on behalf of the United States Government in Chile in an effort to overthrow a freely elected Government. That was a sweeping judgement which he had never made. That was not the first time a statement by him had been distorted in a press release; in fact, all three of the statements which he had made in the Sixth Committee to date had been misrepresented. According to the press release for the Committee's 1311th meeting, the representative of Chile, together with other representatives, had opposed the assignment of top priority to the item on terrorism on the grounds that he lacked instructions from the Chilean Government on the subject. In fact, he had taken that position not because he lacked instructions but among other reasons because a number of other representatives had stated that they lacked such instructions and it had seemed to his delegation that they should be given an opportunity to obtain background material and instructions on that new subject. At the time, that had seemed to him to be a fairly harmless mistake and he had not requested that a correction be issued; none the less, that error had resulted in a number of cable companies distributing an inaccurate version of his delegation's position abroad, particularly in Chile. His second statement to the Committee, at its 1327th meeting, had also been inaccurately reflected in the relevant press release. He had been reported as agreeing with the International Law Commission that under no circumstances could a person who had committed a crime against a diplomat seek refuge anywhere. In point of fact, he had said that his delegation found it unacceptable for the receiving State to be unable to grant asylum even in exceptional circumstances. That fresh distortion of his actual words had led his delegation to send a note to the Secretary-General requesting that the appropriate correction be made to the press release. Now a third statement by his delegation had been distorted; yet at both the 1331st and the 1327th meetings he had supplied advance copies of his statements, which he supposed had been consulted by the press

reporters. His delegation was surprised to receive such treatment from the Office of Public Information. Furthermore, his delegation's complaints in that respect were not limited to press releases of the Sixth Committee. The press release of a statement made by the Chairman of the Chilean delegation at the 2050th plenary meeting of the General Assembly had attributed to him the statement that the Chilean process was one of the great "soviet experiences", when in fact the reference had been to "social experiences". The use of the adjective "soviet" to qualify the Chilean process was altogether insidious.

2. The CHAIRMAN said that due consideration would be given to the comments of the representative of Chile.

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**Report of the United Nations Commission on International Trade Law on the work of its fifth session
(continued) (A/8717)**

3. Mr. BARRERA GRAF (Chairman, United Nations Commission on International Trade Law) said that, before leaving New York, he wished to clarify and expand upon certain aspects of the Commission's work to which he had referred in his earlier statement. From the statements made in the debate thus far, it was clear that members regarded the draft Convention on Prescription (Limitation) in the International Sale of Goods (see A/8717, para. 21) as one of the most important items before the Commission and that its recommendation that the General Assembly should convene an international conference of plenipotentiaries to conclude a final convention on that subject had met with the support of all delegations. He wished to emphasize that a number of documents on the question of prescription had already been transmitted to Member States; in 1970, Governments had received the text of a preliminary draft Uniform Law on Prescription and the text of a questionnaire designed to obtain information and views regarding the length of the limitation or prescription period and other related matters, to which a number of replies had been received. The Commission had then considered the text of the draft Convention on Prescription in the International Sale of Goods prepared by the Working Group¹ and a commentary prepared by the Secretariat² on the draft Convention. At the present time, the draft Convention and the Secretariat's final commentary thereon, were in the hands of the Commission's Rapporteur; subsequently, they would be transmitted

¹See A/CN.9/70.

²A/CN.9/70/Add. 1.

to Member States for their comments. If the Committee agreed, the draft Convention and the Commission's report would be submitted to a conference of plenipotentiaries for its consideration.

4. He sympathized with the comments made by one representative concerning the rather slow progress being made in revising the Uniform Law on the International Sale of Goods (ULIS). That was due to the length and highly technical nature of that instrument and to the fact that, in addition to the original signatories of The Hague Convention of 1964 relating to that law, a number of countries with different economic and social systems—namely, the socialist and developing countries—which had not been parties to that Convention wished to participate in the discussions on its revision. However, some progress was being made: over half of the articles in ULIS had already been discussed, and at its next session, in February 1973, the Working Group on the International Sale of Goods would be considering a fresh set of provisions relating to the obligations of the buyer. It was perhaps safe to predict that a new convention on the subject commanding general acceptance would be completed within, at most, two or three years.

5. With regard to the question of international legislation on shipping, he wished to state that the Working Group on that subject had held a special session at Geneva from 25 September to 6 October 1972 with the participation of Secretariat experts, and had made considerable progress on two very important matters: the Working Group had reached agreement on draft texts relating to carriers' responsibility and arbitration clauses in shipping contracts. The Working Group and the plenary Commission could be expected to achieve positive and perhaps even final results in that area in the fairly near future. The Working Group was due to meet again in New York in February 1973.

6. He wished to thank the members of the Committee for their co-operation and encouragement with respect to the question of international payments. A Working Group had been established and entrusted with the preparation of a final draft uniform law on international bills of exchange and promissory notes. It might be possible to consider that matter at the Committee's next session.

7. On the subject of international commercial arbitration, he observed that the brilliant and comprehensive report prepared by Mr. Nestor had been considered by the Fourth International Congress on Arbitration held at Moscow from 3 to 6 October 1972. The Secretariat had not yet received any report on that debate.

8. With regard to the suggestion made by the delegation of Canada at the 1329th meeting, and supported by other delegations that the Commission should consider the question of the activities of multinational enterprises, the Commission was of course open to any suggestions which the General Assembly and the Committee might care to make regarding its future work. If the Canadian suggestion was accepted, that subject would be considered along with the other priority items on the Commission's agenda. In that

event, however, it might be appropriate to make additional financial provision, since the existing resources of the Commission and the Secretariat would not be adequate to allow that topic to be studied.

9. Mr. FLEITAS (Uruguay) pointed out that in its statement at the 1331st meeting, his delegation had expressed its opposition to the convening of an international conference of plenipotentiaries to conclude a Convention on Prescription (Limitation) in the International Sale of Goods. Consequently, Mr. Barrera Graf had been incorrect in stating that the Commission's recommendation on the point had met with the support of all delegations.

10. Mr. MILLER (Canada) said that while his delegation's suggestion concerning the establishment of a group of experts to study the activities of multinational enterprises would clearly entail certain financial implications, he did not believe that the expenditure involved would necessarily be very great; as envisaged by his delegation, the proposed group would consist of experts drawn from outside the Commission and would be largely self-financing. Furthermore, in making its suggestion, his delegation had not meant to imply that the Commission should necessarily study the matter as a question of priority, since it already had before it a number of topics of great importance, and in any event a number of studies on the question of the activities of multinational companies were already being undertaken both within and outside the United Nations system. His delegation merely wished the Commission to be given a mandate to begin the process of gathering material on the effects of the activities of multinational enterprises on international trade law and to seek expert advice on the matter.

11. Mr. PERSSON (Sweden) paid a tribute to the Commission for its report and congratulated the Chairman of the Commission on his introduction of that report. Since his Government had already set out its views on a number of the topics on the Commission's agenda in written replies to questionnaires, he would confine his remarks to three subjects: the draft Convention on Prescription (Limitation) in the International Sale of Goods; international legislation on shipping; and training and assistance in the field of international trade law.

12. On the first subject, his delegation endorsed the Commission's recommendation (*ibid.*, para. 20) that the General Assembly should convene an international conference of plenipotentiaries to conclude an internationally binding instrument on prescription. His delegation did not agree with the opinion which had been expressed to the effect that such a conference could at the same time be entrusted with the task of revising the text of ULIS, since it was a highly complex and somewhat controversial task which would not be completed for several years, whereas the draft Convention on prescription was on the verge of being completed. The convening of an international conference would give all Member States an equal opportunity to participate in the final drafting of the Convention, a fact which would be likely to ensure it wider

acceptance than a text to which only a relatively limited number of Member States had contributed. While his delegation looked forward to receiving the commentary on the individual articles of the draft Convention on prescription to be prepared by the Secretariat and the analysis of Government proposals and comments, it wished to state that in its view the text prepared by the Working Group at its third session which took place in 1971,³ provided better solutions for certain points than the version which had emerged from the deliberations at the Commission's fifth session (*ibid.*, para. 21).

13. His delegation wished to pay a tribute to the Working Group on International Legislation on Shipping for the progress which it had achieved; the reports of the Secretary-General had been extremely valuable to the Working Group. In his delegation's view, the most appropriate procedure would be to work out an entirely new convention to replace the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels in 1924, and the Protocol to amend that Convention, also signed at Brussels in 1968. It would be possible to incorporate into a new convention elements from more recent conventions relating to road and air carriage. It was essential that the Working Group should be given adequate facilities for its meetings and that it should proceed with the object of preparing an instrument which would command acceptance as widespread as that accorded to the Brussels Convention of 1924.

14. With regard to training and assistance in the field of international trade law, his delegation fully endorsed the Commission's decision (*ibid.*, para. 97) to request the Secretary-General to accelerate and intensify activities in that field. In that connexion, it wished to recall the suggestion which he had made at the twenty-sixth session (1252nd meeting) to the effect that, in addition to other facilities granted or envisaged, the possibility should be explored of arranging seminars at institutions in the developing countries themselves, to be conducted by visiting professors or other experts from the developed countries. That suggestion, which his delegation hoped would be incorporated in a resolution of the General Assembly on the Commission's report, would make it possible to reach a considerable number of students, lawyers, merchants and civil servants in any particular country, in addition to the relatively limited number of persons who were in a position to spend time training in a foreign country.

15. Mr. ZOTIADIS (Greece) congratulated the Commission on the considerable progress made at its fifth session towards the harmonization and unification of international trade law and expressed his appreciation to the Chairman of the Commission for his clear introduction of its report. The report demonstrated that the Commission had the capacity to remove legal obstacles and thus secure international co-operation through the promotion of an unimpeded flow of international trade. The importance of the Commission's work was increased by the basic lack of uniform rules

governing international trade and the continuing determination of international commercial legal relationships by national systems relating to conflict of laws. That situation was becoming more and more unsatisfactory as the volume of world trade increased. His delegation wished to record its appreciation of the Commission's quantitative and qualitative performance. It was impressed with the objectivity with which the Commission had approached the major subjects on its agenda at its fifth session. For all priority topics, it had undertaken the difficult task of revising existing legislation or unifying rules in a way which would be generally acceptable to the international community.

16. His delegation noted with satisfaction that the Commission's approach to the question of the international sale of goods in general, and prescription in the sale of goods in particular, reflected the legitimate interests of buyers and sellers alike. The task of devising generally acceptable revisions to ULIS was a difficult one, and the progress made by experts representing differing legal, social and economic systems in finding solutions to the problem of prescription represented a great step forward. While having certain minor reservations on technical legal issues, his delegation endorsed the general concepts underlying the draft Convention on prescription and also the basic solutions provided by that draft, which conformed with established international commercial practice. His Government was studying the draft in depth and would submit its detailed comments in due course. With regard to the procedure to be followed in adopting a convention on the subject, his delegation supported the Commission's recommendation for the convening of an international conference of plenipotentiaries.

17. With regard to international legislation on shipping, his delegation was satisfied with the progress made by the Working Group on that subject at its first session. In view of the growing importance of combined transport operations, and particularly containerization and unitization of cargo, it would be appropriate to make certain revisions to the Brussels Convention of 1924 and the Brussels Protocol of 1968. However, it would be rather dangerous to depart drastically from the basic principles of that Convention. With regard to the problem of whether the Working Group should prepare a new convention on that subject or merely revise and amplify the Brussels Convention, the question of form was not so significant as the question of substance. It was important to retain the fundamental principles of the Convention, not only because they were based on considerable experience and had been embraced by the overwhelming majority of States but also because they had served long and well, the requirements of international maritime communications and international trade.

18. Economic phenomena were closely connected with the legal framework of their regulation, and he hoped that the Working Group on International Legislation on Shipping would not lose sight of the intrinsic importance of the fundamental principles of *lex lata* as well as of the economic aspects of the juridical solutions of the relevant problems that might, in certain respects, require a *de lege ferenda* approach. He welcomed the co-operation between

³See A/CN.9/70.

the Commission and the United Nations Conference on Trade and Development (UNCTAD), which had facilitated the work of the former on the question of bills of lading; the Commission should also co-ordinate its activities on the subject with the similar efforts of the Inter-Governmental Maritime Consultative Organization and should accept the offer made by the International Institute for the Unification of Private Law to prepare studies on the matter. He hoped that at its next session the Commission would proceed to the substance of its work on international shipping legislation, thus making a genuine contribution to the development of international maritime law.

19. With regard to negotiable instruments, bankers' commercial credits, bank guarantees, the core of the Commission's work on international payments, the existing difficulties were mainly due to the important differences in substantive national rules. A revision of the Geneva Conventions of 1930 and 1931 on bills of exchange and promissory notes and on cheques seemed appropriate in view of the divergencies between legal systems and the changing practices and requirements of international trade. The Commission's practice of inviting comments from international intergovernmental and non-governmental organizations and of requesting comments from Governments was a good one, although the Commission's progress had not been very striking. He congratulated the International Chamber of Commerce for all the assistance it had rendered the Commission in the elaboration of uniform laws regarding contract and payment guarantees.

20. With regard to international commercial arbitration, the suggestions made by the Special Rapporteur in his preliminary report⁴ constituted an excellent basis for efforts to find effective means of settling of international trade disputes through arbitration. The existing conventions on the matter, especially the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and the European Convention on International Commercial Arbitration of 1961 provided the necessary legal framework for the settlement of international trade disputes. However, in cases where States were not bound by such arbitration conventions or where parties to such conventions had not designated an arbitral tribunal, the suggestion made by the observer of the International Law Association, set forth in paragraph 84 of the report, for the establishment of an international commercial arbitration council came very close to the current arbitration system of the International Chamber of Commerce. He welcomed the publication of the Commission's *Yearbook* and of the *Register of Texts* and the Commission's decisions on the training and assistance programme. He supported its recommendations for future work and agreed with the suggestion by the representative of Canada that the Commission should consider the role of the multinational enterprise and its implications for international trade law.

21. Mr. ELIASSEN (Norway) said he was pleased to note that the Commission had approved the text of the draft Convention on Prescription (Limitation) in the International

Sale of Goods and had thereby completed its work on the subject; there were important differences between the major systems of law in that field and only by arduous and thorough work and by showing a spirit of accommodation had the Commission been able to reconcile the different views. His Government would in due time comment in detail on the draft articles, but he could already point out that it seemed unnecessarily complicated to have different limitation periods, as provided in articles 8 and 10; there appeared to be no basis for having a different, longer period for cases of non-performance than for cases of lack of conformity. If a shorter period than four years could be accepted in cases of lack of conformity it should also be possible to accept a shorter period in other cases where a party failed to perform a contract. He therefore proposed that the system should be simplified by adopting one general limitation period of three years.

22. While the convening of an international conference of plenipotentiaries to conclude the Convention on Prescription (Limitation) in the International Sale of Goods seemed a natural procedure in such a highly technical and specialized matter, it might be preferable to postpone the decision on the matter until the next session of the General Assembly, in view of its financial implications and other considerations. The General Assembly could then take a decision in the light of the comments and proposals requested from Governments in the decision of the Commission set forth in paragraph 20 of its report; those comments could relate both to the substance of the draft articles and to the question of further procedure.

23. He was satisfied with the progress achieved by the Working Group on International Legislation on Shipping and fully agreed with the Commission's recommendation that the Working Group should keep in mind the possibility of preparing an entirely new convention, instead of revising and amplifying the rules of the Convention for the Unification of certain Rules relating to Bills of Lading of 1924 and the Protocol thereto of 1968. However, his view was based on considerations of a practical nature; he did not wish to cast aside the valuable experience embodied in that Convention, which was the very foundation of international co-operation in that field of maritime law.

24. He was in some doubt with regard to the suggestion by the representative of Canada that the Commission should appoint a small group of international law experts to examine the effect of the activities of multinational enterprises on international trade law. The political and economic implications of those activities were being studied in the appropriate organs but it appeared more difficult to define their effects on international trade law and to judge whether the Commission was a suitable organ for dealing with the matter. It would be useful and right to give the Commission itself the opportunity to comment on the question before any opinion was expressed by the General Assembly.

25. Mr. JELENIK (Hungary) noted that the Commission had not made uniform progress in all the fields with which it was concerned; for instance, considerable progress had

⁴See A/CN.9/42.

been made with regard to the draft Convention on Prescription (Limitation) in the International Sale of Goods, whereas it would not decide until its sixth session whether to undertake a detailed study of international commercial arbitration. Similarly, items such as bankers' commercial credits or bank guarantees, and training and assistance in the field of international trade law appeared to have received little consideration, although General Assembly resolution 2766 (XXVI) had recommended that the Commission should accelerate its work on training and assistance in the field of international trade law, with special regard to developing countries. At its next session the Commission should reconsider its programme of work and re-examine the priorities to be given to the various items, in the light of its experience. It should also examine the causes leading to progress or lack of results and see whether its working methods were suitable. He approved of the idea that groups of experts should be entrusted with each item and that the Commission should deal only with final drafts presented by those working groups; he also agreed that working groups should spend more time at work between plenary sessions. He regretted that the Working Group on the International Sale of Goods had not followed that course, since the preparation of a uniform law on the international sale of goods was the main task before the Commission.

26. The draft Convention on Prescription (Limitation) in the International Sale of Goods was an important step towards the progressive unification of international trade law. He regretted, however, that when the Commission had been unable to reach agreement on some provisions, it had merely placed them in square brackets; he suggested that when the Secretary-General circulated the draft Convention, together with the commentary thereon, to Governments and to interested international organizations for comments and proposals, he should invite them to pay special attention to the parts in square brackets. He agreed that the General Assembly should convene a conference of plenipotentiaries to conclude a Convention on prescription rather than requesting the Sixth Committee to do so, since the Committee would not have time for a thorough discussion of the draft Convention.

27. He was pleased that progress had been made in the matter of negotiable instruments and international legislation on shipping by the use, as appropriate, of working groups of experts and close co-operation with UNCTAD, and suggested that the Commission might consider similar working methods in other fields. He noted that the Working Group on International Legislation on Shipping would meet for two sessions, lasting a total of five weeks, between the fifth and sixth sessions of the Commission, while the Working Group on the International Sale of Goods would have only one session, lasting two weeks in all. During that session the Working Group was expected to make a final draft of 55 articles covering most of the questions of principle and to revise 15 other articles of ULIS. Such a programme would place an impossible burden on the

Working Group, which should be allowed to hold at least two sessions, each lasting two or preferably three weeks, between plenary sessions.

28. Mr. FABIAN (Czechoslovakia) noted that his country was not a member of the Commission, whose report he had therefore studied very carefully. He welcomed the draft Convention on Prescription (Limitation) in the International Sale of Goods, which represented the Commission's first success in the codification of international trade law; the working methods used in its preparation should be applied to the other items before the Commission, since they had proved to be sound. Some of the provisions of the draft Convention needed to be clarified, but it was a good basis for the discussion and preparation of a final text. He therefore agreed that a conference of plenipotentiaries should be convened to adopt a Convention; all States should be invited to participate in the conference without any restrictions, since all States engaged in international trade.

29. Similar progress had, however, not been achieved with regard to general conditions of sale and perhaps the Commission should try to expedite its work on the matter by establishing working groups. Modification of the text of ULIS was a complex task which required much time and would also depend on the results of the activities of other specialized international bodies.

30. The Commission's work on international legislation on shipping was extremely important, since the rules laid down in the 1924 Brussels Convention, and particularly those relating to the liability of carriers, had been rendered obsolete by the technological evolution of shipping. International payments could be simplified by the preparation of negotiable instruments which would fulfil the functions of promissory notes or cheques, and he welcomed the establishment of the Working Group on International Negotiable Instruments. As to bankers' commercial credits and bank guarantees, the main deficiency in the Commission's work was that it was based on work performed by the International Chamber of Commerce in which some States, and particularly socialist States, were not represented. If socialist States did not participate in the preparation of rules on the matter, the implementation of those rules would be impeded.

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)

31. The CHAIRMAN announced that Australia should be added to the list of sponsors of draft resolution A/C.6/L.852.

The meeting rose at 4.20 p.m.

* Resumed from the 1229th meeting.