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SIXTH COMMITTEE, 1331st MEETING

Thursday, 12 October 1972, at 3.20 p.m.

NEW YORK

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. PALMER (Sierra Leone) said that the inconclusive nature of the report of the United Nations Commission on International Trade Law (A/8717) and the fact that there were many matters on which no consensus had been reached revealed the urgent need for countries to agree on international forms of trade, so as to eliminate the suspicion and ill-will that existed in world trade, especially between the developed and the developing countries. The draft Convention on Prescription (Limitation) in the International Sale of Goods (*ibid.*, para. 21) was not yet a meaningful convention acceptable to all parties, in view of the apparent lack of consensus in the Commission. He therefore agreed with the Commission's recommendation (*ibid.*, para. 20) that an international conference of plenipotentiaries should be convened to conclude a Convention on the matter; the participants should, however, not be confined to the draft articles approved by the Commission but should be given wide latitude.

2. With regard to international legislation on shipping, he felt that all conventions signed before the majority of developing countries had become independent should be set aside, because they had been prepared and signed on behalf of colonial countries by the colonial Powers, mostly in order to settle their own differences.

3. With regard to international payments, he noted that only forms of payment which were not sophisticated could be wholly acceptable to the developing countries; he therefore welcomed the establishment of the Working Group on international negotiable instruments and suggested that it might include China, so that all the major monetary units were represented.

4. He was pleased that the Commission had requested the Secretary-General to consider means whereby nationals of developing countries could acquire more skill and experience in international trade law. The developing nations were extremely suspicious of the developed countries, since they had been trading with those countries for a long time and yet continued to get poorer while the developed countries continued to get richer. Training and experience in that field were therefore necessary if an accord was to be reached on international trade.

5. Mr. FLEITAS (Uruguay) noted that the Commission had been unable to reach a consensus on essential provisions of the draft Convention on Prescription (Limitation) in the International Sale of Goods. For instance, agreement had not been reached on the definition of international contracts of sale of goods, in article 2, or on articles 16, 17, 22, 30 and 31. It would be premature to convene an international conference of plenipotentiaries to conclude a Convention on the basis of the draft adopted by the Commission, in view of the studies and compilations which remained to be prepared in accordance with paragraph 20 of the report. It would be more logical for the Secretariat first to comply with the requests in that paragraph and to prepare an analytical compilation of the comments and proposals made. The Commission should consider that compilation and attempt to reach a complete consensus; the whole matter should then be referred back to the Sixth Committee. The first priority for the Commission was in any case the adoption of a convention on the international sale of goods, which would be supplemented by the Convention on prescription.

6. It should be noted that article 3, paragraph 1, of the draft Convention assumed that the seller and the buyer were totally distinct persons. However, the seller and the buyer might reside in different States and still be one and the same legal person or entity, as was the case with multinational companies; the text did not foresee that situation, which occurred very frequently. It did not seem appropriate for the article to mention different Contracting States, since contracts between States were not involved. Article 3, paragraph 3, providing that the Convention would not apply when the parties had validly chosen the law of a non-Contracting State, appeared to be inappropriate. After a strenuous effort had been made to reach an international agreement, the wishes of the parties should not prevail over it. Articles 5 and 6, and parts of article 4, appeared to be an attempt to overcome the lack of a definition of the subject of the contract in respect of which prescription could be invoked. The limitation period of four years established in article 8 appeared very long for some goods such as consumer goods, while industrial machinery should in any case come under special prescription periods. The phrases "which could be discovered" and "which could not be discovered" in article 10 would be open to varying and arbitrary interpretations.

7. The Commission had performed admirable work, in view of the difficulties of the subject, but he wondered whether it might not be possible to have a partial standardization of legal systems without immediately attempting to formulate a universal convention.

8. Mr. MIMICA (Chile) noted that his country had played an active part in the work of the Commission and of one of its Working Groups. For that reason, he would not refer specifically to the report of the Commission but rather to the question raised by the representative of Canada at the 1329th meeting concerning the future work of the Commission.

9. The Commission should give due regard to the problem of multinational companies, which had a great bearing on international trade relations and considerable significance for his own country. The enormous power, influence and control over political decisions which the multinational companies had gradually acquired had been a matter for concern to experts in economics and related subjects. However, only during the last year had it been discussed by the various intergovernmental bodies responsible for economic, social and trade problems and international co-operation, such as the third session of the United Nations Conference on Trade and Development (UNCTAD). At the opening of that session, the President of Chile had drawn attention to the activities of multinational companies and to the risk that sovereign States might be unable to take effective measures against them because those companies influenced the implementation of international agreements, in accordance with their own interests. Other speakers had agreed that the growth of those new centres of economic power should be checked by specific rules governing their international activities, so that they would help rather than hinder trade among nations. For that reason, UNCTAD, by its resolution 73 (III), had decided to establish a group of experts to make a further study of restrictive business practices followed by enterprises and corporations which had already been identified and which were adversely affecting the trade and development of developing countries. His country had always supported initiatives taken with a view to controlling such companies, which accentuated the developing countries' economic dependency and subjection to foreign decisions. Chile welcomed the concern expressed at the fifty-sixth session of the International Labour Conference, at the Conference of Foreign Ministers of Non-Aligned Countries held at Georgetown, Guyana, and more especially at the fifty-third session of the Economic and Social Council, which had unanimously adopted resolution 1721 (LIII) requesting the Secretary-General, in consultation with Governments, to appoint a group to study the role of multinational corporations and their impact on the process of development, especially that of the developing countries.

10. Lawyers in developing countries were greatly alarmed at the uncontrolled activities of multinational companies and felt that preliminary studies should be made on them if their activities were to be effectively regulated nationally and internationally. They welcomed the concern shown by lawyers of developed countries but thought that the solutions which might be found to control the activities of such companies in developed countries could not be applied in a developing country. It had been suggested that one solution would be for the countries affected to encourage their own multinational companies and thus establish counterbalance to foreign investments; however, such a course would be almost impossible for developing countries when confronted with enormous multinational corporations of foreign origin, nor was it appropriate from any point of view for the world economy to develop into a competition between such giant corporations.

11. His country had had a vivid experience of interference by multinational companies in not only the economic but also the political life of the country. The International Telephone and Telegraph Corporation, which had a monopoly of a public service, had made representations to the United States Government for measures to be taken to prevent the elected President of Chile, Mr. Allende, from taking office; later it had pressed for a plan of economic strangulation and subversive action against Chile, designed to achieve the overthrow of the constitutional Government of Chile, which had been freely elected by the people. Multinational companies could also exert pressure on States which adopted measures in exercise of their sovereignty over their natural resources. One example of such interference had occurred in Chile, after the nationalization and expropriation of foreign copper mining companies had been decided by the National Congress, in accordance with the Constitution. The Kennecott Copper Corporation had objected to the amount of compensation it received after expropriation; it had considered the results of the proper legal proceedings unsatisfactory and had brought a case before a court in a third country, which the previous week had as a precautionary measure placed an embargo on credit corresponding to the sale of an amount of Chilean copper. Thus, that multinational company not only did not respect the sovereign acts of a State but also gravely hampered international trade; the situation was thus within the competence of the Commission, which should not become a purely academic body.

12. In fact, the Commission being responsible for fostering the harmonization and progressive unification of international trade law, could not remain aloof from the general disquiet concerning multinational companies and would have to begin to study the matter as soon as possible. In that connexion, he supported the suggestion of the representative of Canada that a small group of experts should make a preliminary study on the matter, which would complement the study being carried out by the group proposed by the Economic and Social Council. The draft resolution establishing the Commission's group should contain general guidelines for its work.

13. Mr. EL MEKKI (Sudan) said that it was clear that the Commission's task of unifying international trade law would require much time, effort and patience and his delegation had therefore considered the first four sessions of the Commission as preliminary ones. At those sessions, however, considerable progress had been made in reviewing the Convention relating to a Uniform Law on the International Sale of Goods, signed at The Hague in 1964, and preparing a draft Convention on Prescription (Limitation) in the International Sale of Goods. That draft Convention should be thoroughly studied because of its highly specialized technical nature; his delegation was as yet unable to make that study, particularly since it had not

yet received a commentary on the draft Convention. However, it was convinced that important problems would be raised by that draft Convention. For example, the extremely short period of prescription provided for in article 10, paragraph 2, did not allow enough time for discovery of a defect or lack of conformity in technical products such as machine tools. The problem was particularly relevant to developing countries which, in the course of industrialization, were obliged to buy fairly complex products whose lack of conformity was difficult to detect immediately. It would therefore be extremely useful to convene a conference of plenipotentiaries, expert in international trade law, who could make a detailed study of the draft Convention, on condition that the conference would not involve excessive expenditure by the United Nations.

Organization of work (continued)

14. Mr. FLEITAS (Uruguay) suggested that at the following meeting the Committee should revert to the first item on its agenda, namely the report of the International Law Commission on the work of its twenty-fourth session.

15. Mr. MÉNDEZ-MONTENEGRO (Guatemala), supported by Mr. BIGOMBE (Uganda) and Mr. ALCÍVAR (Ecuador), opposed that suggestion on the grounds that consultations were still being held concerning a draft resolution on that item and many members wished to speak on the item relating to the Commission's report.

16. Mr. MILLER (Canada) drew attention to the fact that a draft resolution sponsored by his delegation (A/C.6/L.852) had already been circulated. While he did not wish to press for an immediate discussion on that or any other draft relating to the report of the International Law Commission, he suggested that the matter should be considered early in the following week.

17. Mr. NJENGA (Kenya) stressed the need to allow adequate time for delegations and regional groups to study document A/C.6/L.852, which in any event reflected only one viewpoint and was not wholly acceptable to his delegation.

18. Mr. SAM (Ghana) endorsed that opinion. Section II of the draft resolution dealt with the question of the protection of diplomats, a matter on which his delegation had refrained from speaking until the Committee took up the item on terrorism.

19. Mr. ROSENSTOCK (United States of America) said it was his understanding that the order of consideration of agenda items already agreed upon by the Committee would not be affected by any procedural decision regarding the items on the report of the International Law Commission and the Commission's report. The Committee's ability to complete its heavy agenda would depend on its ability to take decisions at the appropriate time.

20. The CHAIRMAN suggested that the Committee should continue its consideration of the Commission's report on the following day and also on Monday and Tuesday of the following week.

It was so decided.

The meeting rose at 4.10 p.m.