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Chairman: Mr. Erik SUY (Belgium).

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)

1. The CHAIRMAN recalled that at the preceding meeting, after the statement by the Chairman of the International Law Commission, the representative of Kenya had proposed that the statement should be reproduced *in extenso*. In accordance with paragraph 10 (e) of General Assembly resolution 2538 (XXIV), he himself had asked the Secretariat to calculate the financial implications of the proposal.

2. Mr. RYBAKOV (Secretary of the Committee) said that the cost of transcribing the statement from the sound recording, translating it into three languages and reproducing it in four languages would be approximately \$2,000. In addition, since that work would have to be done by specialized staff who were very busy during the General Assembly sessions, a certain time would elapse before the statement could be circulated as a Committee document. An alternative solution involving no financial implications would be to ask the *précis*-writers to include in the summary record of the meeting as full a summary as possible of the statement by the Chairman of the Commission.

3. Mr. MORENO-SALCEDO (Philippines) observed that the statement by the Chairman of the Commission was very important, because the explanations which it contained would give Member States extremely useful guidelines for the preparation of their observations, so that work on the draft articles would be accelerated. The statement should therefore be reproduced *in extenso*.

4. Mr. VALLARTA (Mexico) thought that it would be sufficient to include a summary of the statement by the Chairman of the Commission in the summary record of the meeting. The Chairman had defended the draft articles on the protection of diplomatic agents, but it should not be forgotten that three members of the Commission had had serious reservations about the draft. If great importance was given to the opinion of its Chairman, the impression might be created that it was the view of the entire Commission which had been expressed, whereas there had been no unanimity within it.

5. Mr. YASSEEN (Iraq) thought that the reproduction of the full text of the statement by the Chairman of the

Commission might be useful, but pointed out that the Committee had no uniform practice in such matters. He personally preferred the solution advocated by the representative of Mexico but did not agree with the reasons advanced by that representative, since Mr. Kearney had defended the viewpoint of the Commission—in other words, the viewpoint of the majority of its members—in an objective manner and had even referred to the divergences of opinion which had existed there. In his view, the *précis*-writers could be asked to bring out the main points of the statement.

6. Sir Vincent EVANS (United Kingdom) said that the Chairman of the Commission had made a masterly statement. However, he was not convinced of the need to have it reproduced *in extenso*. He did not agree with the objection raised by the Mexican representative but thought that, since Mr. Kearney had not spoken from a prepared text, he had not intended his remarks to be reproduced verbatim. It would suffice to ask the *précis*-writers to give a particularly full account of the Chairman's statement.

7. The CHAIRMAN said that, if there were no objections, he would consider that the Committee decided to request the Secretariat to reproduce as fully as possible the points of a legal nature in the statement made by the Chairman of the Commission at the 1328th meeting and to submit to him, for possible corrections, the summary record of his statement.

It was so decided.

8. The CHAIRMAN announced that consultations were being held with a view to the submission of a draft resolution on the report of the Commission.

AGENDA ITEM 86

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

9. Mr. YASSEEN (Iraq) emphasized the growing importance of international trade, which had ceased to be simply a means of enrichment and had become an instrument capable of improving the distribution of resources in the world. Because of the link existing between international trade and development, the United Nations Commission for International Trade Law should concern itself not only with technical questions but also with the broad principles governing international trade and should co-operate more closely with the United Nations Conference on Trade and Development (UNCTAD) in order to help the Conference to

codify principles such as the freedom of trade and the granting of certain privileges to the developing countries so that those countries could, in the interests of the whole world, attain a level of living commensurate with the demands of human dignity.

10. He thanked the Chairman of the Commission for his instructive introduction of the Commission's report on its fifth session. For his part, he would confine himself to a few preliminary remarks on some of the Commission's activities. The Commission concentrated on everything which promoted the unification and harmonization of international trade law. In that regard, the ideal approach was the preparation of conventions or uniform laws, but one should not underestimate other methods, such as the solution of the problems, which would persist for some time, posed by conflicts of law. The harmonization and unification of the rules of conflict and of the solutions of the problem of the applicable law in international trade law should not be overlooked.

11. The Commission had been wise to prepare a draft Convention on Prescription (Limitation) in the International Sale of Goods (*ibid.*, para. 21) since that was a vital aspect of international trade law. Uniform legislation on that subject would eliminate surprises by apprising parties of the scope of their rights and thus ensuring the stability of international transactions. It would be difficult to standardize the various national approaches in that respect without a deliberate international effort. The concept of prescription was accepted in all the legal systems of the world, but the length of the prescription period was determined by national laws. The Commission had not only settled the question of the length of the prescription period but had also laid down clear rules concerning various other aspects of prescription, such as the starting-point and the calculation of the period.

12. Certain articles of the draft Convention called for comment. In the first place, it was noteworthy that article 3, paragraph 2, rightly dealt with the vital problem of a possible conflict between the provisions of the future Convention and those of whatever law was applicable by virtue of the rules of private international law, specifying that the former provisions should prevail.

13. Some of the provisions of article 5 appeared superfluous, such as subparagraphs (a) and (d), since it went without saying that, by virtue of its subject-matter, namely the sale of goods the future Convention could not apply to personal injuries or to judgements or awards made in legal proceedings. Similarly, article 6, paragraph 1, seemed unnecessary, since it was also quite obvious that the Convention could not cover the supply of labour or other services. Of course, the Commission might have had its reasons for including those provisions, and it would be interesting to hear what they were.

14. Article 7 was of vital importance, and the Commission had rightly foreseen in that article the need to be guided, in interpreting and applying the future Convention, by its international character, in order to ensure the essential uniformity and prevent the provisions from being interpreted in the light of the different national laws.

15. By precluding any automatic application of prescription, article 23 had adopted a very flexible solution, especially as article 35 allowed any State to declare that it was not compelled to apply the provisions of article 23.

16. On the subject of implementation, which was dealt with in part II, articles 30 and 31 seemed unnecessary and it was not surprising that there had been no consensus on them in the Commission: there was no need to remind Contracting States and federal States of the extent of their obligations and, indeed, that was a matter covered by the law of treaties. Article 32 also seemed superfluous, since it merely recalled the general principle of non-retroactivity of treaty provisions.

17. The Commission had been wise to establish, in article 36, the residual nature of the future Convention compared with conventions already concluded or to be concluded on the subject, when the seller and buyer had their places of business in States parties to those conventions.

18. The Commission had rightly left the formal and final clauses to be drawn up by the body which would be responsible for adopting the Convention. That body should take as a starting-point the law of treaties in the Vienna Convention on the Law of Treaties, and only adding, where necessary, exceptions to the rules already established. His delegation had no preconceived idea about the body which should adopt the Convention and was prepared to consider the opinions of the other members.

19. The importance which the developing countries attached to international legislation on shipping was especially noteworthy. The question was bound up with the advancement of international trade and development problems and was under study by the Working Group established for that purpose. It was most desirable that the Commission should maintain extremely close co-operation with UNCTAD, which had also referred the question to a working group for study. The Commission was to be congratulated on the very wise decision which it had taken with a view to expediting work by allowing its Working Group the possibility of preparing a new convention on the subject instead of merely revising the existing rules. That would enable new States to defend their interests by participating in the drafting of the new convention.

20. As for the question of international commercial arbitration, the Special Rapporteur, Mr. Nestor, was to be commended for his valuable work, which had made it possible to achieve progress in that field. Arbitration was an institution which had a major role to play in international commercial life because it met the requirements of the business world for flexibility and speed. The developing countries were still somewhat hesitant with regard to the arbitration clauses, which did not always take account of their legitimate interests where, for example, the venue of arbitration was established in a distant capital. The Commission should consider ways of remedying that situation. It was surprising that the Commission should have decided to transmit the proposals of its Special Rapporteur for comment only to States members of the Commission rather than to all States Members of the United

Nations. The latter course would have enabled the Commission more easily to formulate generally acceptable suggestions.

Mr. Jacovides (Cyprus), Vice-Chairman, took the Chair.

21. Mr. MILLER (Canada) said that his country, which was not a member of the Commission but was a major participant in world trade, followed closely the Commission's efforts to foster the progressive harmonization and unification of international trade law. The results obtained were impressive and the Commission and its Working Groups were to be commended on their efficient performance, as was the Secretariat for its industrious support. The draft Convention on Prescription (Limitation) in the International Sale of Goods deserved special mention. The Working Group on Time Limits and Limitations (Prescription) and the Commission had made rapid progress on that project, being careful to consult with Governments and interested international organizations at every stage of the work. The Canadian delegation had listened with considerable interest to the detailed observations of the representative of Iraq, who had invited representatives to state their preferences with regard to the procedures to be followed for the adoption of the convention. The Canadian Government, which would examine the draft convention very carefully, took the view that, as the subject matter to be dealt with was technical and complex, it would be preferable to convene a conference of plenipotentiaries.

22. Canada was pleased at the progress which had been made by the Working Group on the International Sale of Goods. The latter should continue its review with a view to suggesting modifications in the text of the Uniform Law on the International Sale of Goods (ULIS) which would lead to its wider acceptance.

23. The topic of international legislation on shipping was one in which Canada, with a seaboard on two oceans and a highly developed cargo insurance industry, had a keen interest. The Commission had done well to concentrate its efforts on the law related to bills of lading with a view to establishing a balanced allocation of risks between the cargo owner and the carrier. The Working Group dealing with the question should be commended for its close co-operation with the corresponding UNCTAD body.

24. On the topic of international commercial arbitration, the Canadian delegation extended its congratulations to Mr. Nestor on the report which he had compiled. The Canadian Government would be submitting its comments on that report prior to the Commission's sixth session.

25. Members of the Sixth Committee would remember that, during the twenty-sixth session, the Canadian delegation had suggested (1248th meeting) that the Commission should consider studying the conduct of multinational enterprises. Subsequent events, reflected in the increased attention being given to the question both within and without the United Nations family, had strengthened its beliefs in that connexion. For that reason, the Canadian delegation wished to make suggestions as to the means by which the Commission might both further

serve the unification and development of international trade law and the economic and legal interests of all States.

26. Canada accepted the presence of the multinational enterprise, whose role in Canadian economic development was well recognized. It must be understood, however, that because of their structure and orientation, multinational enterprises had interests and objectives which might not always accord with national economic objectives. The multinational enterprise, in Canada or elsewhere, was able to circumvent national legal jurisdiction in many and diverse fields such as trade policy, foreign exchange regulation, taxation, business practices and pollution control. The multinational enterprise was also a medium for the extra-territorial extension of the laws and policies of other Governments. In recent years, the Canadian Government had devoted considerable resources to the consideration of the question and had recently published a study on foreign investment in Canada, which included a detailed discussion of the problems to which he had referred.

27. Many Governments were currently concerned to regulate the activities of the multinational enterprise. In addition to national initiatives, bilateral arrangements such as double taxation agreements and the informal anti-trust notification and consultation procedure which existed between the United States and Canada, could serve as first steps in meeting some of the problems created by foreign investment and the activities of the multinational enterprise. It was increasingly clear, however, that national programmes and bilateral arrangements, in isolation, might prove inadequate to the task of monitoring and, where necessary, regulating the activities of multinational enterprises. The Canadian Government had therefore participated extensively in the intergovernmental consultations on that subject being conducted within the Organisation for Economic Co-operation and Development, and supported the work which was under way within the International Labour Organisation (ILO) on the relationship between multinational undertakings and social policy. It had noticed, with very great interest, resolution 73 (III) on restrictive business practices adopted at the third session of UNCTAD and by the Economic and Social Council, whose resolution 1721 (LIII), of 28 July 1972, which established a study group to study the role of multinational corporations and their impact on the process of development. In the view of the Canadian delegation, those resolutions reflected the increasing appreciation of many Governments that the aggregate of the economic activity of the multinational enterprise might exert an influence on economic development which was beyond their control and that such common concerns might appropriately be examined by the United Nations on behalf of all Member States.

28. The study group established by the Economic and Social Council could review studies undertaken by ILO, UNCTAD and other United Nations agencies and would be able to draw on the very considerable research undertaken on the changing structure of international trade and economic development, on the influence of direct foreign investment on trade and capital movement and on the role of the multinational enterprise. The Canadian delegation believed that, without duplicating the work to be undertaken

by that study group, the Commission might undertake an examination of the conduct of the multinational enterprise in the context of international trade law. It had in mind the appointment of a small group of experts to study the question and prepare the way for the harmonization of national laws and regulations so as to create a transnational net which constrained the multinational enterprises yet permitted them to develop in an efficient manner. The proposed group of experts could also report to the Commission regarding the merits and practicability of various proposals developed within the academic community with a view to enhancing the amount of information available to national Governments on the activities of multinational enterprises, and thus better equip Governments to regulate international trade and investment or even to envisage the establishment of an international régime respecting the multinational enterprises, as a step towards making its activities a subject of international law. University circles had put forward a wealth of proposals to that end, involving the establishment of an international corporate register, the establishment by multilateral agreement of an organization like the General Agreement on Tariffs and Trade to maximize the benefits and minimize tensions arising from international investment and the establishment of international adjudicative machinery similar to the International Centre for Settlement of Investment Disputes of the International Bank for Reconstruction and Development. All the activities to which he had referred were clearly within the Commission's competence as defined by the General Assembly in resolution 2205 (XXI).

29. His delegation was firmly convinced that the Commission could and should give thorough consideration to the possible implications for international trade law of the activities of multinational enterprises. It was aware that the Commission had already drawn up a list of priority subjects, and was in no way suggesting that any of those topics should be set aside. However, it believed that the Commission, which had a responsibility for the progressive harmonization and unification of international trade law, must equip itself to contend with the question of the influence of multinational enterprises on international trade law. Without adding to the already heavy workload of the Commission, it would be possible to establish a small group of experts to carry out a preliminary review and submit recommendations to it. Naturally, it was for the Commission to determine the manner in which it intended to meet its responsibilities in that regard; however, the Canadian Government was fully prepared to assist the Commission, if the latter so desired.

30. The Commission could not fail to note the importance which Governments and United Nations organs attached to the examination of the activities of multinational enterprises and the influence of such activities on international trade, investment and economic development. It was obvious that the legal aspects of those questions should be studied. For that reason, his delegation proposed that the Commission should ensure that it was in a position to tackle those matters. As the representative of Iraq had emphasized, the Commission should not confine itself to studying the

technical problems within its sphere of competence, but should work towards a transformation in international trade relations so that they served the interests of the international community at large. His delegation believed that the events which had occurred since the previous session of the General Assembly had only served to emphasize the importance of the proposal which it had made at that time.

31. Mr. CASTRÉN (Finland) noted with satisfaction the progress made by the Commission and expressed his appreciation for the support given to the Commission by the Secretariat. The draft Convention on Prescription (Limitation) in the International Sale of Goods had been prepared in a very short time, and the Commission in paragraph 20 of its report, had recommended that the General Assembly should convene an international conference of plenipotentiaries to conclude that Convention. His delegation favoured that solution. While it was true that other draft conventions might be worked out in the near future, it was desirable for each draft to be concluded in the form of a convention as soon as possible.

32. The work on international legislation on shipping was now well under way, and the revision of the rules concerning bills of lading seemed to be proceeding very rapidly. Encouraging progress had also been made with regard to the uniform rules governing the international sale of goods and negotiable instruments. One of the priority topics—international commercial arbitration—had reached a new stage and would be discussed by the Commission at its sixth session on the basis of the comprehensive report submitted by its Special Rapporteur, Mr. Nestor.¹

33. His delegation also appreciated the efforts made by the Commission to further improve its working methods within the financial resources available to it.

34. Mr. BESSOU (France) congratulated the Commission on the work done at its fifth session and thanked the Chairman of the Commission for his outstanding introduction of its report at the previous meeting. He wished to make the following comments on the report.

35. With regard to international legislation on shipping, his delegation believed that the system of responsibility arising from the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels in 1924, should be completely revised. It was not, however, for the Commission to carry out the task of drafting a new convention to replace the Brussels Convention, and the Commission should be congratulated on having accepted the offer of the International Institute for the Unification of Private Law to prepare a study on the rules which should apply to the carriage of live animals. It was important to ensure that the Commission received the assistance of all interested international organizations, notably the Inter-Governmental Maritime Consultative Organization.

¹A/CN.9/64.

36. With respect to international payments, the Commission, at its fifth session, had considered the questions of international negotiable instruments, bankers' commercial credits and bank guarantees. On the subject of negotiable instruments, it should be recalled that conventions had been concluded on bills of exchange and promissory notes in 1930 and 1931 under the auspices of the League of Nations, although those conventions had been ratified, with reservations, by only a small number of States, many common law countries declining to accede to them. International trade had, however, adapted to that situation, and the survey carried out by the Secretary-General² at the request of the Commission had revealed no pressing problems in that field. Nevertheless, the Commission at its fifth session, had decided to establish a Working Group (see A/8717, para. 61) which it had requested to prepare a final draft uniform law on international bills of exchange and promissory notes and to consider the desirability of preparing uniform rules applicable to international cheques. His delegation for one felt that it would not be desirable to prepare any new draft convention for as long as those for whom such an instrument would be intended did not themselves feel a need for it. However, it was gratifying to note the co-operation between the Commission and various interested international organizations in that field; it was to be hoped that that co-operation would be expanded in the future.

37. With regard to the question of bankers' commercial credits and bank guarantees, the Commission had adopted a fully satisfactory working method: by keeping abreast of the work done by the International Chamber of Commerce it was able to fulfil its role of promoting the progressive harmonization and unification of the law of international trade.

²A/CN.9/67 and Corr.1.

38. On the subject of the draft Convention on Prescription (Limitation) in the International Sale of Goods, the promptness shown by the Commission and its Working Group were commendable, and his delegation supported the Commission's recommendation to the General Assembly (*ibid.*, para. 20) for the convening of an international conference of plenipotentiaries to conclude a convention on the subject.

39. With regard to the question of uniform rules governing the international sale of goods, his delegation felt that it was too early to attempt to improve the ULIS text of 1964, which had not yet been tested in practice; in any event, any revision of ULIS should not impair that instrument's clarity.

40. On the question of general conditions of sale, his delegation endorsed the Commission's decision (*ibid.*, para. 43) to defer until its sixth session final action on the promotion of the ECE general conditions and to request the Secretary-General to submit to it his final study on the feasibility of developing general conditions embracing a wider scope of commodities. Governments and representative professional associations should be associated as closely as possible with that study.

41. With respect to international commercial arbitration, his delegation agreed with the approach being taken at the present stage of the Commission's work.

42. With regard to training and assistance in the field of international trade law, his delegation was willing to support the Commission's initiatives provided that they led to programmes of practical training, for instance, in enterprises or banks and that they received the support of the other organizations competent on that subject.

The meeting rose at 12.40 p.m.