

Questions concerning the International Law Commission

The thirty-second annual session of the International Law Commission, held at Geneva from 5 May to 25 July 1980, was mainly devoted to completing the first reading of draft articles on succession of States to State archives; part I of draft articles on State responsibility; and draft articles on treaties concluded between States and international organizations or between international organizations. The Commission adopted provisionally initial draft articles on the law of the non-navigational uses of international watercourses and on jurisdictional immunities of States and their property, began consideration of part II of a draft on State responsibility, and considered the topics of international liability for injurious consequences arising out of acts not prohibited by international law, and the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.

The General Assembly at its regular 1980 session considered the Commission's report and adopted a resolution approving and making recommendations on its programme of work for 1981.

Report of the International Law Commission

Succession of States in respect of matters other than treaties

On the basis of the eleventh and twelfth reports submitted by the Special Rapporteur, Mohammed Bedjaoui (Algeria), the Commission adopted on first reading four additional articles -C, D, E and F-on State archives, which were appended to the draft on succession of States in respect of matters other than treaties on the understanding that their ultimate place therein should be decided in the light of comments by Governments. They dealt, respectively, with succession of States to State archives in the cases of transfer of part of the territory of a State, uniting of States, separation of part or parts of the territory of a State and dissolution of a State.

State responsibility

The Commission completed the first reading at its 1980 session of a set of articles constituting part I of a draft on responsibility of States for internationally wrongful acts; part I concerned the origin of international responsibility. On the

basis of the eighth (1979) report of the former Special Rapporteur, Roberto Ago (Italy), it provisionally adopted articles 33, 34 and 35, constituting the final provisions of chapter V (the last chapter of part I of the draft) concerning circumstances precluding wrongfulness. Articles 33 and 34 dealt with the circumstances precluding wrongfulness which were still outstanding, namely, state of necessity and self-defence. The Commission added a concluding provision (article 35) reserving questions that might arise in regard to compensation for damage caused by acts the wrongfulness of which was precluded under other articles of chapter V.

The Commission, taking into consideration a preliminary report submitted by the new Special Rapporteur, Willem Riphagen (Netherlands), reviewed a broad range of general and preliminary questions concerning part II of the draft, dealing with the content, forms and degrees of international responsibility.

Treaties concluded between States and international organizations or between international organizations

The Commission completed the first reading of draft articles on treaties concluded between States and international organizations or between international organizations and decided to transmit them to Governments for comments. At the 1980 session, on the basis of the ninth report submitted by the Special Rapporteur, Paul Reuter (France), the Commission provisionally adopted articles 61 to 80, constituting the remainder of part V (articles 61 to 72), part VI (articles 73 to 75) and part VII (articles 76 to 80), and an annex.

Articles 61 to 64, which completed the part V section on termination and suspension of the operation of treaties, dealt with supervening impossibility of performance (article 61), fundamental change of circumstances (article 62), severance of diplomatic or consular relations (article 63) and emergence of a new peremptory norm of general international law (*jus cogens*) (article 64). Articles 65 to 68 concerned procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty (article 65); procedures for judicial settlement, arbitration and conciliation (article 66); instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty (article 67) and revocation of notifications and instruments provided for in articles 65 and 67 (article 68). Articles 69 to 72 dealt with the consequences of: the invalidity of a treaty (article 69); the termination of a treaty (article 70); the invalidity of a

treaty which conflicted with a peremptory norm of general international law (article 71); and the suspension of the operation of a treaty (article 72). Articles 73 to 75 concerned miscellaneous provisions, including: cases of succession of States, responsibility of a State or of an international organization, outbreak of hostilities, termination of the existence of an organization and termination of participation by a State in the membership of an organization (article 73); diplomatic and consular relations and the conclusion of treaties (article 74); and the case of an aggressor State (article 75). Articles 76 to 80 covered depositaries of (articles 76 and 77), notifications regarding (article 78), corrections to (article 79) and registration of (article 80) treaties. The annex formulated procedures in application of article 66 for the establishment and functioning of a Conciliation Commission.

Non-navigational uses of international watercourses

On the basis of a second report by the Special Rapporteur, Stephen M. Schwabel (United States), the Commission provisionally adopted articles 1 to 5 and an article X of its draft on the law of the non-navigational uses of international watercourses. Articles 1 to 5 dealt respectively with: the scope of the articles, system States, system agreements, parties to the negotiation and conclusion of system agreements, and use of waters which constituted a shared natural resource. Article X concerned the relationship between the draft's articles and other treaties in force. In addition, the Commission prepared a note describing its tentative understanding of what was meant by the term "international watercourse system."

Jurisdictional immunities of States and their property

The Commission, on the basis of a second report submitted by the Special Rapporteur, Sompong Sucharitkul (Thailand), provisionally adopted articles 1 and 6 of its draft on jurisdictional immunities of States and their property, which dealt, respectively, with the scope of the articles and State immunity.

It also discussed, but did not adopt, article 2 on the use of terms, and article 3 on the interpretation of the expressions "foreign State" and "jurisdiction;" it postponed consideration of article 4, on jurisdictional immunities not within the scope of the articles being considered, and article 5, on the principle of non-retroactivity of those articles.

Other Special Rapporteur reports

The Commission discussed the preliminary reports of Special Rapporteurs, on international

liability for injurious consequences arising out of acts not prohibited by international law, Robert Q. Quentin-Baxter (New Zealand), and on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, Alexander Yankov (Bulgaria).

International Law Seminar

The sixteenth session of the International Law Seminar was held at Geneva between 2 and 20 June 1980, with 25 participants. Austria, Denmark, Finland, the Federal Republic of Germany,

Kuwait, the Netherlands, Norway and Sweden gave fellowships to participants from developing countries. For the first time, a private body, the Dana Fund for International and Comparative Legal Studies (United States), also granted fellowships.

Other topics

On the basis of the recommendations of a planning group established in June 1980, the Commission adopted its work programme for 1981, which included: the second reading of the draft articles on succession of States in respect of matters other than treaties, and on treaties concluded between States and international organizations or between international organizations; continuing preparation of drafts on the responsibility of States for internationally wrongful acts, particularly on content, forms and degrees of international responsibility; as well as the study of and preparation of additional draft articles on the other topics on its 1980 work programme.

During the year, Commission members attended meetings of other legal bodies, such as the Asian-African Legal Consultative Committee (Jakarta, Indonesia, April/May) and the Inter-American Juridical Committee (Rio de Janeiro, Brazil, January/February). Those committees as well as the Arab Commission for International Law and the European Committee on Legal Co-operation were represented at the Commission's 1980 session.

At the Commission's request, the third edition of the handbook "The work of the International Law Commission" was published during the year under review.

Consideration by the General Assembly

During the debate in the General Assembly's Sixth (Legal) Committee on the report of the International Law Commission, many Members referred to the subject of State archives. Afghanistan, Brazil, Kenya and Yugoslavia pointed out that State archives were an essential part of a nation's cultural heritage. They stressed the obligation to pass them on to a successor State as soon as it attained sovereignty. In Jamaica's view,

State archives could be essential to national development. Hungary said the draft on succession of States in respect of matters other than treaties should emphasize the importance of preserving the unity of State archives in all cases of State succession. China believed that the draft articles on State archives should not be placed together with those on State property. It wondered whether it might be possible to broaden the definition of State archives to include cultural objects reflecting historical development.

Referring to the question of State responsibility, the USSR expressed the view that the Commission must act more quickly on the urgent needs of the international community. Japan felt that the draft articles on that subject were of great value since they contained guidelines regarding the fundamental rules of international law. The Ukrainian SSR referred to what it considered to be ambiguities in several articles which could be subject to broad interpretations. Several Members referred to State responsibility arising out of internationally wrongful acts, to circumstances precluding the wrongfulness of an act, and, in particular, to the draft articles dealing with self-defence, state of necessity and compensation for damages. The Byelorussian SSR, Hungary, Mongolia and the USSR said reference should be made in the draft article on self-defence to Article 51 of the Charter of the United Nations setting out the inherent right of individual or collective self-defence.¹

The Libyan Arab Jamahiriya called for further definitions in relation to state of necessity and self-defence. In Algeria's view, the application of those articles in inter-State relations would give rise to difficulties and disputes, especially in the case of the use of armed forces. Pakistan supported the inclusion of state of necessity and self-defence in the category of circumstances in which wrongfulness of an act should be excused. Bulgaria and Mongolia pointed out that the provisions of the articles might give rise to the possibility of misuse.

Trinidad and Tobago held that recognition of a plea of state of necessity to safeguard essential financial and economic interests of the State would assist the Governments of developing countries to cope with their short-term and temporary financial difficulties without damaging their international credit.

Egypt approved the approach taken by the Commission with regard to treaties between States and international organizations or between international organizations. The Federal Republic of Germany and the United States thought the draft articles should follow the

¹ For text of Article 51 of the Charter, see APPENDIX II.

1969 Vienna Convention on the Law of Treaties² as closely as possible. The United Kingdom said the draft articles appeared to be suitable for transformation into an international convention which would complement the Vienna Convention. However, the Commission should consider recasting the draft articles in the form of modifications to the Vienna Convention to avoid the risk of amendments that would undermine the authority of the Convention. Nigeria thought the draft articles should emerge as an international instrument and not merely as an appendage of the Convention.

Concerning the non-navigational uses of watercourses, Egypt, Finland and Spain supported the view that there was a primary need to prepare a framework treaty embodying fundamental norms. In Algeria's opinion, the draft articles could in time appear as a standard agreement on which agreements on particular watercourses could be reached. Sri Lanka said the rules should be complemented by more detailed agreements between States. The German Democratic Republic was opposed to the inclusion of any provisions whereby the uses of inland waters would be regulated by the law on non-navigational uses of international watercourses. Some Members, such as Ethiopia and Yugoslavia, felt that more attention should be paid to the right of States to sovereignty over their natural resources; others, including Algeria, Bangladesh, Egypt, Italy and Thailand, emphasized the use of shared natural resources in a spirit of equity and co-operation.

As to the question of jurisdictional immunity of States and their property, the Ukrainian SSR and the USSR found the draft articles unsatisfactory. Pakistan called for reconsideration of the question. Japan noted that many States had exempted commercial activities of foreign States from the scope of application of jurisdictional immunities. If the Commission's work were to be directed against such contemporary trends in the practice of States, Japan said, its end product would prove to be unacceptable to many.

With regard to the liability for injurious acts not prohibited by international law, Sweden and Trinidad and Tobago agreed that the practical importance of the subject had increased because technological advances had made it a more frequent occurrence that licit activities in one State produced harmful effects in another. Czechoslovakia felt that the study of the subject should focus on activities which caused damage within the territory under the jurisdiction of one State, the injurious consequences of which were also felt on the territory of other States. Canada suggested that a further area to be studied was that of damages to areas beyond national jurisdiction; in such cases, no individual State might suffer

immediate harm, but all States suffered a diminution of their rights in such regions. Japan suggested that a realistic approach would be to draw up a legal framework which took into account the contents of existing agreements in such areas as outer space activities, the use of atomic energy and the prevention of marine pollution, and to endeavour to extend the scope of the rules in those agreements.

On the subject of the diplomatic courier and the diplomatic bag not accompanied by courier, many Members, including Algeria, Brazil, Bulgaria, Hungary and Mongolia, agreed that international developments had enhanced the need for protection of diplomatic couriers. Czechoslovakia and the USSR felt that an appropriate legal instrument would promote co-operation among States. Japan, the United Kingdom and the United States believed that the subject did not merit urgent attention.

A number of countries stressed that summary records of the Commission's meetings should be reinstated and the honorarium payable to members of the Commission should be increased.

Also before the Sixth Committee was a note verbale dated 20 October from Yugoslavia, requesting that resolutions on legal aspects of a new international economic order and on international water resources law adopted at the fifty-ninth Conference of the International Law Association (Belgrade, 18-23 August) be circulated as Assembly documents.

On 15 December, the General Assembly, on the recommendation of the Sixth Committee, approved the Commission's programme of work for 1981 and recommended that, taking into account the written comments of Governments and views expressed in the Assembly, the Commission should: complete the second reading of the draft articles on succession of States in respect of matters other than treaties; commence the second reading of the draft articles on treaties between States and international organizations or between international organizations; continue its work on State responsibility with the aim of beginning the preparation of draft articles on responsibility of States for internationally wrongful acts; continue its work on international liability for injurious consequences arising out of acts not prohibited by international law; proceed with the preparation of draft articles on the law of the non-navigational uses of international watercourses and on jurisdictional immunities of States and their property; continue its work on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, with a view to possibly elaborating an

² See Y.U.N., 1969, p. 734.

appropriate legal instrument; and continue its study of relations between States and international organizations.

The Assembly endorsed the Commission's requests for Governments' observations and comments on the draft articles adopted on first reading and welcomed the considerations and recommendations of the Commission on questions having a bearing on the nature, programme and methods of its work. The Assembly reaffirmed its previous decisions concerning research projects and studies required by the work of the Commission and the increased role of the Codification Division of the Office of Legal Affairs of the Secretariat, as well as those on the need for continuing provision of summary records of the Commission's meetings.

These Assembly decisions were set forth in resolution 35/163, adopted without vote. The text was sponsored by 39 States (see DOCUMENTARY REFERENCES below) and approved by the Sixth Committee on 3 December without vote.

Most-favoured-nation clauses

In accordance with a General Assembly resolution of 19 December 1978,³ the item entitled "Consideration of the draft articles on most-favoured-nation clauses" was included in the agenda of the thirty-fifth (1980) session of the Assembly. The Sixth Committee had before it, in addition to the draft articles submitted by the International Law Commission to the 1978 session of the Assembly,⁴ a report of the Secretary-General containing the comments and observations of Governments and intergovernmental organizations, as well as an analytical compilation of those comments and observations.

On 15 December, the Assembly, on the recommendation of the Sixth Committee, requested the Secretary-General to reiterate his invitation to Member States, organs of the United Nations and interested intergovernmental organizations to submit or bring up to date, not later than 30 June 1981, their written comments and observations on the relevant chapter of the Commission's 1978 report and, in particular, on the draft articles on most-favoured-nation clauses adopted by the Commission and provisions relating to such clauses on which the Commission was unable to take decisions. The Assembly requested States to comment on the Commission's recommendation that the draft articles should be recommended to Member States with a view to

the conclusion of a convention. The Secretary-General was requested to bring up to date the analytical compilation of the comments and observations submitted. The Assembly further decided to consider the matter again in 1981.

These decisions were set forth in resolution 35/161, adopted by consensus. The text, sponsored by Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, India, Mongolia, Romania and the USSR, was approved by consensus by the Sixth Committee on 5 December.

The proposal for a convention was welcomed by several Members, including Bangladesh, Barbados, the Byelorussian SSR, Canada, Egypt, the German Democratic Republic, Hungary, Mexico and the USSR. Zaire regarded the draft articles as a valid basis for negotiations with a view to concluding an international convention. France and the Federal Republic of Germany considered it premature and inadvisable to embody the draft articles in a convention. The United Kingdom and the United States spoke against the proposal for a convention; the United States felt its practical importance would be minimal since it would govern only a small number of situations. Austria, Greece and Japan voiced serious doubts that a convention was the most appropriate instrument. Japan and others suggested that the draft articles should form a set of guidelines. The observer of the European Economic Community (EEC) stressed EEC's view that an express exception to the application of the most-favoured-nation clause must be made for customs unions and free-trade areas composed either of States or of entities other than States which, like EEC, had the power to grant and receive most-favoured-nation treatment.

In the USSR's view, the application of the most-favoured-nation clause would help implement sovereign equality of States. Other States, including Argentina and Iran, thought that the draft articles constituted a fundamental step forward in the codification of international law.

While stressing the value of most-favoured-nation treatment in principle, several countries, including Canada and China, made specific suggestions to improve the draft articles. Zambia thought that any legal instrument which might be adopted should particularly take into account the interests of the developing countries.

³See Y.U.N., 1978, p. 950, resolution 33/139.

⁴Ibid., p. 945.

Documentary references and texts of resolutions

Consideration by the General Assembly

General Assembly- 35th session
Sixth Committee, meetings 25, 33, 37, 43-60, 72.
Plenary meeting 95.

A/35/10. Report of International Law Commission on work of its 32nd session, Geneva, 5 May-25 July.

A/35/388. Draft articles adopted by International Law Commission on topics considered at its 32nd session. Note by Secretary-General.

A/C.6/35/4. Note verbale of 20 October from Yugoslavia (transmitting resolutions of 59th Conference of International Law Association, Belgrade, 18-23 August).

A/C.6/35/L.20. Algeria, Argentina, Australia, Austria, Bolivia, Brazil, Bulgaria, Canada, Chile, Ecuador, Egypt, Equatorial Guinea, German Democratic Republic, Germany, Federal Republic of, Greece, India, Italy, Jamaica, Japan, Kenya, Libyan Arab Jamahiriya, Mexico, Mongolia, Netherlands, New Zealand, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Spain, Sri Lanka, Suriname, Thailand, Turkey, Uruguay, Venezuela, Yugoslavia: draft resolution, approved without vote by Sixth Committee on 3 December, meeting 72.

A/35/731. Report of Sixth Committee.

Resolution 35/163, as recommended by Sixth Committee, A/35/731, adopted without vote by Assembly on 15 December 1980, meeting 95.

The General Assembly,

Having considered the report of the International Law Commission on the work of its thirty-second session,

Emphasizing the need for the progressive development of international law and its codification in order to make it a more effective means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and to give increased importance to its role in relations among States,

Noting with appreciation that at its thirty-second session the International Law Commission, pursuant to General Assembly resolutions 33/139 of 19 December 1978 and 34/141 of 17 December 1979, completed the first reading of the addendum to the draft articles on succession of States in respect of matters other than treaties and of the draft articles on treaties concluded between States and international organizations or between international organizations, as well as the first reading of the set of articles constituting part one of the draft on responsibility of States for internationally wrongful acts,

Noting further with appreciation the progress made by the International Law Commission in the preparation of draft articles on the law of the non-navigational uses of international watercourses, and on jurisdictional immunities of States and their property, as well as the work done by it regarding the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and international liability for injurious consequences arising out of acts not prohibited by international law,

Recognizing the importance of referring legal and drafting questions to the Sixth Committee, including topics which might be submitted to the International Law Commission, thus enabling the Commission further to enhance its contribution to the progressive development of international law and its codification,

1. Takes note of the report of the International Law Commission on the work of its thirty-second session;

2. Expresses its appreciation to the International Law Commission for the work accomplished at that session;

3. Approves the programme of work planned by the International Law Commission for 1981;

4. Recommends that, taking into account the written comments of Governments and views expressed in debates in the General Assembly, the international Law Commission should, at its thirty-third session:

(a) Complete, as recommended by the General Assembly in resolution 34/141, the second reading of the draft articles on succession of States in respect of matters other than treaties, adopted at its thirty-first and thirty-second sessions;

(b) Commence the second reading of the draft articles on treaties concluded between States and international organizations or between international organizations;

(c) Continue its work on State responsibility with the aim

of beginning the preparation of draft articles concerning part two of the draft on responsibility of States for internationally wrongful acts, bearing in mind the need for a second reading of the draft articles constituting part one of the draft;

(d) Continue its work on international liability for injurious consequences arising out of acts not prohibited by international law;

(e) Proceed with the preparation of draft articles on the law of the non-navigational uses of international watercourses and on jurisdictional immunities of States and their property, taking into account the replies to the questionnaires addressed to Governments as well as information furnished by them;

(f) Continue its work on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, with a view to the possible elaboration of an appropriate legal instrument;

5. Recommends further that the International Law Commission should continue its study of the second part of the topic of relations between States and international organizations;

6. Endorses the decisions of the International Law Commission requesting observations and comments on the provisions adopted on first reading of the draft articles on succession of States in respect of matters other than treaties, on treaties concluded between States and international organizations or between international organizations and on responsibility of States for internationally wrongful acts;

7. Urges Governments to respond as fully and expeditiously as possible to the requests of the International Law Commission for comments and observations on its draft articles and questionnaires and for materials on topics on its programme of work;

8. Welcomes the considerations and recommendations contained in the report of the International Law Commission on questions having a bearing on the nature, programme and methods of work of the Commission and the organization of its sessions with a view to the timely and effective fulfilment of the tasks entrusted to it;

9. Reaffirms its previous decisions concerning research projects and studies required by the work of the International Law Commission and the increased role of the Codification Division of the Office of Legal Affairs of the Secretariat, as well as those concerning the need for continuing provision of summary records of the Commission's meetings;

10. Expresses confidence that the International Law Commission will continue to keep the progress of its work under review and to develop the methods of work best suited to the speedy completion of the tasks entrusted to it;

11. Reaffirms its wish that the International Law Commission will continue to enhance its co-operation with legal organs of intergovernmental organizations whose work is of interest for the progressive development of international law and its codification;

12. Expresses the wish that seminars will continue to be held in conjunction with sessions of the International Law Commission and that an increasing number of participants from developing countries will be given the opportunity to attend those seminars;

13. Requests the Secretary-General to forward to the International Law Commission, for its attention, the records of the debate on the report of the Commission at the thirty-fifth session of the General Assembly and to prepare and distribute a topical summary of the debate.

MOST-FAVOURABLE-NATION CLAUSES

General Assembly—35th session

Sixth Committee, meetings 62, 65-68, 73, 75.

Plenary meeting 95.

A/35/203 and Add.1-3. Report of Secretary-General (comments and observations from Governments and intergovernmental organizations).

A/35/443. Analytical compilation of comments and observations from Governments, organs of United Nations which have competence in subject-matter and interested intergovernmental organizations. Report of Secretary-General.

A/C.6/35/L.23. Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, India, Mongolia, Romania, USSR: draft resolution, approved by consensus by Sixth Committee on 5 December, meeting 75.

A/35/729. Report of Sixth Committee.

Resolution 35/161, as recommended by Sixth Committee, A/35/729, adopted by consensus by Assembly on 15 December 1980, meeting 95.

The General Assembly,

Recalling its resolution 33/139 of 19 December 1978 relating to the report of the International Law Commission on the work of its thirtieth session, in particular section II of the resolution,

Having considered the item entitled "Consideration of the draft articles on most-favoured-nation clauses," including the report of the Secretary-General submitted pursuant to resolution 33/139,

Bearing in mind the importance of facilitating international trade and development of economic co-operation among all States on the basis of equality, mutual advantage and non-discrimination in the establishment of the new international economic order,

Aware of the fact that more replies from States and interested intergovernmental agencies are needed,

1. Takes note of the report of the Secretary-General;

2. Requests the Secretary-General to reiterate his invitation to Member States, organs of the United Nations which have competence in the subject-matter and interested intergovernmental organizations to submit or bring up to date, not later than 30 June 1981, their written comments and observa-

tions on chapter II of the report of the International Law Commission on the work of its thirtieth session and, in particular, on:

(a) The draft articles on most-favoured-nation clauses adopted by the Commission:

(b) Those provisions relating to such clauses on which the Commission was unable to take decisions;

and also requests States to comment on the recommendation of the Commission that those draft articles should be recommended to Member States with a view to the conclusion of a convention on the subject;

3. Requests the Secretary-General to circulate, before the thirty-sixth session of the General Assembly, the comments and observations submitted in accordance with paragraph 2 above;

4. Further requests the Secretary-General to bring up to date, in view of the comments and observations mentioned in paragraph 2 above, the analytical compilation of comments and observations from Governments, organs of the United Nations which have competence in the subject-matter and interested intergovernmental organizations;

5. Decides to include in the provisional agenda of its thirty-sixth session the item entitled "Consideration of the draft articles on most-favoured-nation clauses" and to consider it at an early stage.

Other documents

Yearbook of the International Law Commission, 1980, Vol. I: Summary Records of the Meetings of the Thirty-second Session (Geneva), 5 May-25 July 1980. U.N.P. Sales No.: E.81.V.3; Vol. II. Part One: Documents of the Thirty-second Session (Excluding the Report of the Commission to the General Assembly). U.N.P. Sales No.: E.81. V.4 (Part I); Vol. II, Part Two: Report of the Commission to the General Assembly on the Work of its Thirty-second Session. U.N.P. Sales No.: E.81.V.4 (Part II).

Chapter III

International trade law

United Nations efforts continued in 1980 towards the progressive harmonization and unification of international trade law with the aim of reducing or removing legal obstacles to the flow of international trade, having regard for the different social and legal systems of the world.

The United Nations Conference on Contracts for the International Sale of Goods, held at Vienna in March/April, adopted and opened for signature the United Nations Convention on Contracts for the International Sale of Goods, as well as a Protocol amending the Convention on the Limitation Period in the International Sale of Goods (1974).

The United Nations Commission on International Trade Law (UNCITRAL), which co-ordinated legal activities in its field, met in July at New York and adopted Conciliation Rules for

use in disputes arising in international commercial relations; it postponed consideration of guidelines for administering commercial arbitrations under its Arbitration Rules and invited input for preparation of a draft model law on arbitral procedure.

The General Assembly, on 4 December, by resolution 35/52 recommended use of the Conciliation Rules and by resolution 35/51 recommended that UNCITRAL continue legal work on the various topics of its work programme, which included drafting uniform rules on liquidated damages and penalty clauses, a convention on international bills of exchange and promissory notes, and uniform rules applicable to international cheques.

Details of these and other decisions are given in this chapter.

United Nations Conference on Contracts for the International Sale of Goods

In accordance with a General Assembly resolution of 16 December 1978,¹ the United Nations Conference on Contracts for the International Sale of Goods was held at Vienna from 10 March to 11 April 1980.

On 10 April, it adopted the United Nations Convention on Contracts for the International Sale of Goods (the 1980 Sales Convention) as well as a Protocol amending the Convention on the Limitation Period in the International Sale of Goods (the 1974 Limitation Convention, concluded at New York on 14 June 1974) to harmonize the 1974 Convention's provisions with those of the new Sales Convention. The Protocol was opened for accession on 11 April. On that date, the Convention was signed by Austria, Chile, Ghana, Hungary, Singapore and Yugoslavia. The Final Act of the Conference, to which was annexed the texts of the Convention and the Protocol, was also signed on 11 April.

Sixty-two States were represented at the Conference; in addition, Venezuela, the International Bank for Reconstruction and Development and the International Chamber of Commerce sent observers, as did six intergovernmental organizations.

The Conference elected Gyula Eorsi (Hungary) as President, and representatives of 22 States as Vice-Presidents. It established a General Committee, a First and Second Committee, a Drafting Committee and a Credentials Committee. (For list of participants and officers, see APPENDIX III.)

The Conference had before it the draft convention on contracts for the international sale of goods approved by the United Nations Commission on International Trade Law (UNCITRAL) in 1978,² which it assigned to its First Committee, along with an article on declarations relating to contracts in writing—one of a set of draft provisions concerning implementation, declarations, reservations and other final clauses.

To its Second Committee the Conference entrusted preparation of the remainder of the provisions on those topics and final clauses, as well as a protocol to the 1974 Limitation Convention, working on the basis of documents prepared by the Secretary-General. The Convention to be drawn up was intended to replace the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods, annexed to two 1964 Hague Conventions on these topics, so as to render the texts capable of wider acceptance

by countries having different legal, social and economic systems.

On the basis of the reports of the First, Second and Drafting Committees, the Conference, after approving the text article by article, adopted the Convention by a roll-call vote of 42 to 0, with 9 abstentions (Burma, China, Colombia, Iraq, Kenya, Panama, Peru, Thailand, Turkey). On the basis of reports by the Second and Drafting Committees and after article-by-article approval it adopted, by a roll-call vote of 33 to 0, with 11 abstentions (Burma, Colombia, Denmark, Finland, Greece, India, Kenya, Nigeria, Sweden, Thailand, Zaire), the Protocol amending the Limitation Convention. The Final Act was adopted by acclamation.

At its July session, UNCITRAL noted with appreciation that the Conference had adopted the Sales Convention and Protocol and expressed its hope that the Convention would receive the widest possible acceptance.

The General Assembly, in adopting resolution 35/51 on 4 December (see following subchapter), took note of the successful conclusion of the Conference.

1980 Sales Convention

The United Nations Convention on Contracts for the International Sale of Goods consisted of 101 articles divided into four parts.

Part I of the Convention was divided into two chapters. Chapter I (articles 1 to 6) described the sphere of application of the Convention. The Convention governed the formation of contracts of sale and the rights and obligations of the seller and buyer arising from such contracts between parties having their places of business in different States or where the law of a contracting State would otherwise have been applied under the rules of private international law. Chapter II (articles 7 to 13) contained general provisions applicable to the entire Convention, intended to promote uniformity for such purposes as interpretation, determination of intent, usage and understandings. A contract of sale need not be evidenced by writing and was not subject to any other requirements as to form.

Part II, concerning the formation of contracts, contained 11 articles on the identification of offers that were sufficiently definite so that their acceptance resulted in a contract and on when the offer became effective (articles 14 and 15), on revocability of offers (articles 16 and 17), on methods of acceptance of offers (article 18), on when acceptance

¹ See Y.U.N., 1978, p. 960, resolution 33/93.

² Ibid., p. 956.

became effective (articles 20, 21, 23 and 24), after which it could not be withdrawn (article 22), and on the effect of an acceptance quoting terms different from those contained in the offer (article 19)-which, if material enough, could constitute a rejection and counter-offer.

Part III, on the sale of goods, contained five chapters. Chapter I (general provisions) defined in article 25 a fundamental breach of contract as one resulting in such detriment as to deprive a party of what he was entitled to receive under the contract; a declaration of avoidance of contract was effective only by notice to the other party (article 26). Chapter I also dealt with the effect of delay or error in transmission of a communication (article 27), when a court was required to enforce one party's right to require performance of an obligation by the other party (article 28), and the right to modify or abrogate contracts by agreement between the parties (article 29).

Chapter II (obligations of the seller) dealt, in article 30 and in three sections comprising articles 31 to 52, with: the obligations of the seller regarding how, where and when he was to deliver the goods and the handing over of documents related thereto (articles 31 to 34); conformity of the goods to the requirements of the contract (articles 35 to 40); the seller's obligation to deliver goods free of third-party claims unknown to the buyer (articles 41 to 44); and remedies available (such as substitute goods, offers of repair, time extensions, claims for damages, avoiding of contract, reduction in price or refusal of delivery of goods) for breach of contract by the seller (articles 45 to 52).

In availing himself of the remedies under the Convention, the buyer would lose the right to rely on a lack of conformity of the goods with the contract if he did not notify the seller of defects within two years of delivery, unless that period was contractually different.

Chapter III (on obligations of the buyer, who, by article 53, was obliged to pay the price for the goods and take delivery as required by the contract and this Convention) set forth, in three sections: the buyer's obligation to pay the purchase price for the goods (articles 54 to 56) and where and when (articles 57 to 59); his obligation to take delivery (article 60); and the remedies for a breach of contract by the buyer (articles 61 to 65).

Chapter IV, on the passing of risk, contained articles 66 to 70 concerned with the time when the risk of loss of or damage to the goods passed from the seller to the buyer.

Chapter V, containing provisions common to the obligations of the seller and the buyer, contained six sections. The first section comprised articles 71 to 73 on anticipatory breach of the contract, i.e. cases in which the contract might be avoided or obligations suspended if it became apparent that a party would not perform a substantial part of his obligation. The second section (articles 74 to 77) stipulated the means of calculating damages for breach of contract; the third (article 78) entitled interest to be paid if a sum due was in arrears; the fourth (articles 79 and 80) enumerated cases permitting exemption from liability for failure to perform contractual obligations because of impediments

beyond a party's control; the fifth (articles 81 to 84) spelled out the effects (loss of rights and obligations that remained) resulting from avoidance of the contract; and the sixth section (articles 85 to 88) contained the obligation to preserve the goods during the life of the contract.

Although remedies were available at the option of the party which did not receive performance, several limitations were placed on the exercise of choice. The right to avoid the contract or require delivery of substitute goods was also circumscribed, unless the breach of contract was so serious as to be "fundamental."

part IV of the Convention (articles 89 to 101) contained the final provisions. The United Nations Secretary-General was designated as depositary (article 89). The Convention was not to prevail over already concluded agreements covering the same matters (article 90), and it was to be open for signature at United Nations Headquarters, New York, until 30 September 1981 (article 91). Contracting States could extend the Convention's provisions to their territorial units (article 93).

In order to retain the advantages of having an integrated convention covering both the formation of contracts and the sale of goods while at the same time providing States with a degree of flexibility, article 92 allowed a State at the time of signature, ratification, acceptance, approval or accession to declare that it would not be bound by part II of the Convention (on the formation of contracts) or by part III (on the sale of goods). States could also declare at that time that the Convention was not to apply to contracts of sale or their formation where States had the same or closely related legal rules on matters governed by the Convention, as well as in other specified instances in which States made joint or reciprocal unilateral declarations to that effect (articles 94 to 97); these articles also indicated how such declarations were to be made or withdrawn and when they entered into force. No reservations were permitted except those expressly authorized (article 98).

Articles 99 and 100 dealt with the Convention's entry into force, and ratification, acceptance and approval of, accession to, and applicability of it. The Convention was to enter into force on the first day of the month one year after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession. Article 101 allowed for denunciation.

Protocol amending the 1974 Limitation Convention

The 14-article Protocol amending the Convention on the Limitation Period in the International Sale of Goods brought the Convention's provisions into harmony with the 1980 Sales Convention.

The first six articles replaced provisions not in concord with the 1980 Convention. The remaining articles were final provisions. Article VII designated the Secretary-General as depositary and article VIII concerned instruments of accession. The Protocol

was to enter into force (article IX) on the first day of the sixth month following deposit of the second such instrument, provided that the 1974 Limitation Convention and the 1980 Sales Convention were also in force; if not, it would enter into force when those Conventions were in force. Ratification of or accession to the Limitation Convention could also constitute accession to the Protocol (article X), although a party could choose, under article XII, not to be bound by the Protocol's first article, applying the Limitation Convention only if the places of business of the parties to a sales contract

were in contracting States or if the rules of private international law made the law of a contracting State applicable. A party to the amended Limitation Convention was to be considered also a party to the unamended Convention in relation to a party to the Convention which had not yet acceded to the Protocol (article XI). Article XIII pertained to the means and effective date of denunciation, and article XIV bound the depositary to transmit certified copies of the Protocol to all States and copies of the amended Limitation Convention, when in force, to all States parties.

Documentary references

United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March-11 April 1980. Official Records: Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committees. U.N.P. Sales No.: E.81.IV.3.

A/CONF.97/18. Final Act of United Nations Conference on Contracts for International Sale of Goods. Done at Vienna,

11 April. (Annex I: United Nations Convention on Contracts for International Sale of Goods; Annex II: Protocol amending 1974 Convention on Limitation Period in International Sale of Goods.)

A/35/17. Report of UNCITRAL on work of its 13th session, Headquarters, New York, 14-25 July, Chapter II.

A/C.6/35/L.2. Note by Secretary-General.

United Nations Commission on international Trade Law

The United Nations Commission on International Trade Law (UNCITRAL) held its thirteenth session at United Nations Headquarters, New York, from 14 to 25 July 1980. It adopted the UNCITRAL Conciliation Rules, intended for use in disputes arising in international commercial relations where the parties sought amicable settlement by recourse to conciliation. It decided to consider at its 1981 session the preparation of draft guidelines for administering international commercial arbitrations under the UNCITRAL Arbitration Rules and to invite Governments to aid in obtaining material on arbitration for the purpose of preparing a draft model law on arbitral procedure. The Commission decided, in the context of legal problems related to a new international economic order, to accord priority to work related to contracts in the field of industrial development. It noted progress made on draft uniform rules on liquidated damages and penalty clauses, on a draft convention on international bills of exchange and international promissory notes and on uniform rules applicable to international cheques. It decided to hold a symposium on international trade law in 1981.

The General Assembly, on 4 December, adopted two resolutions on the work of UNCITRAL. It recommended, by resolution 35/52, use of the Conciliation Rules and, by resolution 35/51, that UNCITRAL continue legal work on the various topics of its work programme, appealing for State and organizational support for those efforts.

International commercial arbitration and conciliation

UNCITRAL Conciliation Rules

The Commission, on 23 July, adopted the UNCITRAL Conciliation Rules for use in international commercial relations disputes.

The draft rules, submitted in 1979, had been revised by the Secretariat, in conformity with the Commission's request,³ to take account of views expressed during the 1979 session and observations of Governments and interested international organizations.

The 20 articles covered: conditions under which the Rules might be applied, varied or excluded (article 1); invitations to conciliate and procedures by which conciliation proceedings were to begin (article 2); the number, appointment, working methods and role of the conciliator(s) (articles 3 to 5 and 7), including proscription of his role in arbitral or judicial proceedings (article 19); authorized assistance (articles 6 and 8); means of communication and place of meetings (article 9); rules for disclosure and confidentiality of information and proceedings (articles 10 and 14); the duty of the parties to co-operate with the conciliator (article 11); authorization to make settlement suggestions (article 12); drawing up settlement agreements (article 13) and fixing of costs and deposits relating thereto (articles 17 and 18); limitations on con-

³ See Y.U.N., 1979, p. 1130.

current resort to arbitral or judicial proceedings (article 16); and prohibition of the introduction as evidence in such other proceedings of views or proposals made by the other party or the conciliator (article 20).

It was recognized that conciliation under these Rules was a non-judicial, non-adversarial proceeding. The function of the conciliator, under article 7, was to assist the parties to reach an amicable settlement of their dispute. At every stage of the proceedings, the parties were to be in complete control. Either party could, under article 15, declare unilaterally that the proceedings were terminated. It was this element of party control throughout the proceedings, and the consequently less formal nature of the procedure, that distinguished the UNCITRAL Conciliation Rules from the UNCITRAL Arbitration Rules adopted by the Commission in 1976.⁴

By resolution 35/52, adopted by consensus on 4 December, the General Assembly recommended the use of the Conciliation Rules and asked the Secretary-General to distribute them as widely as possible. The text of the resolution was introduced in the Sixth (Legal) Committee by Austria on behalf of 27 Member States (see DOCUMENTARY REFERENCES below); it was approved by the Committee on 7 November, also by consensus.

After approval of the text, Peru, speaking also on behalf of Colombia, Ecuador and Venezuela, wished to make it clear that the Conciliation Rules would not take precedence over rules that Andean Pact bodies had adopted or would adopt on the subject.

The Assembly, by resolution 35/51, noted with satisfaction UNCITRAL'S unanimous adoption of the Rules (for details, see ACTION BY THE GENERAL ASSEMBLY below).

UNCITRAL Arbitration Rules

As the Commission had requested in 1979,⁵ the Secretary-General prepared for its 1980 session a set of guidelines to assist arbitral institutions in formulating rules for administering arbitrations under the 1976 UNCITRAL Arbitration Rules. These guidelines sought to prevent disparity in the use of the Rules by independent arbitral institutions, which were increasingly applying the Rules in administered arbitration although such use had been excluded from their scope, since they had been designed for ad hoc arbitration.

There was support in the Commission for the idea of preparing guidelines in the form suggested by the Secretary-General, but it was decided to postpone detailed discussion until 1981 to allow time for consultations with interested circles.

The advantages and disadvantages of preparing a list of arbitral and other institutions that had declared their willingness to act as appointing authorities under the UNCITRAL Arbitration Rules were also discussed in the Secretary-General's note. He suggested that it would not be desirable to do so; rather, it should be left to the institutions themselves to declare their willingness to act as such. The Commission adopted this recommendation.

Model arbitration law

On 21 July, UNCITRAL took note of a progress report by the Secretariat on its preparation of a model law on arbitral procedure, requested in 1979.⁶ In order to facilitate preparation of an analytical compilation of national laws pertaining to arbitration procedure, to serve as a basis for preparing the model law, UNCITRAL invited Governments to provide materials on national legislation and case law and pertinent treatises.

The Assembly, in adopting resolution 35/51 (for details, see ACTION BY THE GENERAL ASSEMBLY below), repeated the appeal for such materials.

New international economic order

The Working Group on the New International Economic Order reported to UNCITRAL in 1980 on its session held at United Nations Headquarters from 14 to 25 January. It recommended six topics for inclusion in the work programme of the Commission. Of special importance to developing countries and to UNCITRAL'S work towards the new international economic order, in the Working Group's view, was the topic of harmonization, unification and review of contractual provisions commonly occurring in international contracts in the field of industrial development.

Additional topics were the legal aspects of multilateral commodity agreements, studies of legal issues arising from foreign investment, of intergovernmental bilateral agreements on industrial co-operation and of agreements on natural resources, and identification of legal problems arising from the activities of transnational corporations.

Pursuant to a Working Group request, the Secretary-General submitted a study reviewing the various types of contracts used in the context of industrialization: contracts on research and development, consulting, engineering, supply and construction of large industrial works, transfer of technology, service and maintenance, technical assistance, leasing, joint ventures, and industrial co-operation in general. The study described their main characteristics and content,

⁴See Y.U.N., 1976, p. 823.

⁵See Y.U.N., 1979, p. 1130.

⁶Ibid.

noted existing legislation and referred to work in this field by other organizations and possible work to be done by UNCITRAL.

The Commission agreed to accord priority to work related to contracts in the field of industrial development and asked the Secretary-General to carry out preparatory work in respect of contracts on supply and construction of large industrial works and on industrial co-operation. He was to report to the Working Group, thenceforth to be composed of all UNCITRAL members, which was to report on progress to the Commission in 1981.

Also in accordance with its terms of reference, the Working Group considered the question of co-ordinating the legal work of organizations relevant to the new international economic order in order to avoid duplication of effort.

The Group placed before the Commission the following considerations: it was in the first instance the duty of Governments to exercise control over the work programmes of United Nations bodies in which they were represented, for which purpose detailed reports on different subjects and of the work thereon by various organizations would be useful; there should be greater co-operation between the secretariats of United Nations bodies; there might be need for a more rational approach by the United Nations to the legislative work of its various organs; and thought should be given to regular meetings of chairmen of commissions and committees.

The Commission agreed that the Group's recommendations, if fully implemented, would improve co-ordination. However, it felt that more information was required about the programmes and terms of reference of the various United Nations organs. It therefore asked the Secretariat to submit to it in 1981 complete information on the activities of other organs and international organizations so as to enable UNCITRAL to take appropriate decisions.

The General Assembly, in adopting resolution 35/51 (for details, see ACTION BY THE GENERAL ASSEMBLY below), called on UNCITRAL to continue taking account of Assembly resolutions on the new international economic order,⁷ and endorsed its decision to carry out preparatory work on the contract topics chosen. It also reaffirmed UNCITRAL'S mandate in co-ordinating legal activities in trade law, and recommended that it maintain close collaboration and liaison with United Nations and other international organizations active in the field.

International trade contracts

At its 1980 session, UNCITRAL had before it a report of its Working Group on International Contract Practices which had met in September

1979.⁸ The Group had considered preliminary draft rules, prepared by the Secretariat, regulating liquidated damages clauses (aimed at pre-estimating compensation payable on breach of contract) and penalty clauses applicable in a wide range of international trade contracts. There had been general agreement in the Group that greater consensus might be achieved on a set of rules designed to regulate such clauses in selected types, rather than a wide range, of international trade contracts. The Commission accepted the Group's recommendations that further work on the subject was justified, that another Group session be convened and that further studies be submitted to that session, focusing on how such clauses were drafted and used in trade contracts, the types of contracts that might usefully be regulated by uniform rules, and legal difficulties encountered in their use in courts and arbitration.

International payments

At its 1980 session, UNCITRAL had before it the reports of its Working Group on International Negotiable Instruments on its Geneva session in September 1979⁹ and its New York session from 2 to 11 January 1980. These reported on progress made in preparing a draft convention on international bills of exchange and international promissory notes (mainly credit instruments) and in preparing draft uniform rules on international cheques (mainly payment instruments).

The Commission noted that the Working Group had completed the substance of its work on the 85-article draft convention, subject to reconsideration of certain issues referred to UNCITRAL'S Study Group on International Payments. The Working Group had also held a preliminary exchange of views on 30 articles of the draft uniform rules. It asked the Secretariat to complete the draft rules and submit a study on legal issues arising outside the cheque. It also agreed to convene a drafting group to harmonize the language versions of the draft convention.

The Commission decided to defer consideration of the draft convention until the Working Group had completed its work on international cheques, so that the Group might present a single integrated text or two harmonized texts. It also agreed that the Secretariat should prepare a commentary to the draft convention.

The Commission also discussed a report of the Secretary-General setting out issues to be considered in preparing uniform rules on security inter-

⁷ See Y.U.N., 1974, pp. 324 and 326, resolutions 3201(S-VI) and 3202(S-VI) of 1 May 1974; and 1975, p. 348, resolution 3362(S-VII) of 16 September 1975.

⁸ See Y.U.N., 1979, p. 1128.

⁹ Ibid., p. 1129.

ests in goods (relating to secured property for credit transactions). The Commission's request for the report had followed from the Secretary-General's 1979 conclusion that, due to the complexity and different concepts of security interests, it would not be feasible to try to achieve unification by means of a uniform law in the form of a convention, although a model law might be formulated.¹⁰

The Commission concluded in 1980 that in all likelihood world-wide unification of the law was unattainable and that further work should not currently be carried out.

Symposium on international trade law

At its 1980 session, the Commission was informed of pledges from Austria, Canada, Finland, the Federal Republic of Germany, the Netherlands, Sweden and Yugoslavia towards the holding of the second UNCITRAL symposium on international trade law during UNCITRAL'S 1981 session at Vienna; these would be sufficient to finance travel and subsistence of some 15 participants from developing countries. The Commission invited further contributions to enable it to invite additional participants and asked the Secretary-General to make the arrangements for the seminar. He was also asked to report on the possibility of holding regional seminars.

There was general agreement that discussion in the symposium should cover the matters in which UNCITRAL was active, in particular arbitration and conciliation, sales, maritime law and the legal implications of the new international economic order.

By resolution 35/51 (for details, see ACTION BY THE GENERAL ASSEMBLY below), the Assembly expressed appreciation to States for symposium contribution offers and appealed to other States, organizations and individuals for similar contributions.

Other matters

Law library

After considering ways to develop further the materials in UNCITRAL'S law library at the International Trade Law Branch of the Secretariat's Office of Legal Affairs in Vienna- the UNCITRAL secretariat-UNCITRAL invited Governments to place the library on their mailing lists for legal materials such as official journals, gazettes, legislative texts and other publications.

In adopting resolution 35/51 (for details, see ACTION BY THE GENERAL ASSEMBLY below), the Assembly repeated this appeal and asked the Secretary-General to earmark from funds allocated to the common library of the Vienna Interna-

tional Centre an amount needed to maintain the law library and to acquire needed materials.

Summary records

Drawing attention to the relevance of summary records for the legislative history of United Nations treaties, conventions and other legal texts, UNCITRAL believed that it was in the interest of United Nations legislative work that such records be available. It requested the Assembly to authorize them for UNCITRAL meetings devoted to the preparation of draft conventions or other legal instruments.

The Assembly, in adopting resolution 35/51 (for details, see following section), recognized the relevance of those records and emphasized the advisability of continuing drawing up complete summary records for such meetings.

By resolution 35/10 B of 3 November 1980, the Assembly authorized summary records for UNCITRAL in such cases, subject to review in 1981 (for details, see p. 1229).

Action by the General Assembly

On 4 December 1980, the General Assembly adopted two resolutions on the work of UNCITRAL. By resolution 35/52, it recommended use of UNCITRAL'S Conciliation Rules (for details, see subsection above). Resolution 35/51 addressed other topics of UNCITRAL'S report and work programme, as noted in the sections above (model arbitration law, the new international economic order including co-ordination activities, training and assistance in international trade law, including the symposium on international trade law, and the United Nations Conference on Contracts for the International Sale of Goods). Taking note of the Commission's report on its 1980 session, the Assembly recommended that UNCITRAL continue its work in the above areas and commended its progress and efforts to enhance its efficiency.

Specifically, the Assembly by this resolution took note of UNCITRAL'S adoption of the Conciliation Rules and of its decisions on future work concerning the new international economic order, reaffirming UNCITRAL'S co-ordination mandate in this regard and recommending maintenance of collaboration and liaison with other international organizations for this purpose, and endorsed UNCITRAL'S decision to carry out preparatory work on two specific industrial contract topics. In addition, the Assembly appealed: for further contributions for the 1981 symposium; for law library materials, also asking the Secretary-General to earmark budgetary funds for library maintenance and acquisitions; and

¹⁰ Ibid.

for information on arbitration procedure relevant to drawing up a model law on arbitral procedure.

Resolution 35/51 was adopted by consensus by the Assembly. The Sixth Committee had similarly approved it on 7 November; the text was introduced by Austria on behalf of 31 States (see DOCUMENTARY REFERENCES below).

Documentary references and texts of resolutions

International commercial arbitration and conciliation

UNCITRAL CONCILIATION RULES

General Assembly- 35th session
Sixth Committee, meetings 4-10, 41.
Plenary meeting 81.

A/35/17. Report of UNCITRAL on work of its 13th session, Headquarters, New York, 14-25 July, Chapter V A.

A/C.6/35/L.10. Argentina, Australia, Austria, Bolivia, Canada, Chile, Cyprus, Egypt, Finland, France, Germany, Federal Republic of, Greece, Italy, Jamaica, Japan, Kenya, Mexico, Netherlands, Nigeria, Panama, Philippines, Spain, Sweden, Trinidad and Tobago, United Kingdom, United States, Uruguay: draft resolution, approved by consensus by Sixth Committee on 7 November, meeting 41.
A/35/627. Report of Sixth Committee, draft resolution II.

Resolution 35/52, as recommended by Sixth Committee, A/35/627, adopted by consensus by Assembly on 4 December 1980, meeting 81.

The General Assembly,

Recognizing the value of conciliation as a method of amicably settling disputes arising in the context of international commercial relations,

Convinced that the establishment of conciliation rules that are acceptable in countries with different legal, social and economic systems would significantly contribute to the development of harmonious international economic relations,

Noting that the Conciliation Rules of the United Nations Commission on International Trade Law were adopted by the Commission at its thirteenth session after consideration of the observations of Governments and interested organizations,

1. Recommends the use of the Conciliation Rules of the United Nations Commission on International Trade Law in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation;

2. Requests the Secretary-General to arrange for the widest possible distribution of the Conciliation Rules.

Action by the General Assembly

General Assembly- 35th session
Fifth Committee, meeting 43.
Sixth Committee, meetings 4-10, 41.
Plenary meeting 81.

A/35/15, Vol. II. Report of Trade and Development Board of UNCTAD (21st session, Geneva, 15-27 September), Chapter VII B (para. 485: decision of 24 September).

A/35/17. Report of UNCITRAL on work of its 13th session, Headquarters, New York, 14-25 July. (Annex: List of documents before Commission.)

A/C.6/35/L.3. Note by Secretary-General.

For its consideration of UNCITRAL'S work, the Assembly also had before it a note by the Secretary-General indicating that the Trade and Development Board of the United Nations Conference on Trade and Development, at its September 1980 session, had considered UNCITRAL'S report on 24 September and had taken note of it without comment.

A/C.6/35/L.9. Argentina, Australia, Austria, Bangladesh, Bolivia, Brazil, Canada, Chile, Cyprus, Czechoslovakia, Egypt, Finland, France, Germany, Federal Republic of, Greece, Guyana, Italy, Jamaica, Kenya, Morocco, Netherlands, Nigeria, Panama, Philippines, Romania, Spain, Sweden, Trinidad and Tobago, Turkey, United States, Yugoslavia: draft resolution, approved by consensus by Sixth Committee on 7 November, meeting 41.

A/C.6/35/L.11, A/C.5/35/68, A/35/681. Administrative and financial implications of draft resolution I recommended by Sixth Committee in A/35/627. Statements by Secretary-General and report of Fifth Committee.

A/35/627. Report of Sixth Committee, draft resolution I.

Resolution 35/51, as recommended by Sixth Committee, A/35/627, adopted by consensus by Assembly on 4 December 1980, meeting 81.

The General Assembly,

Having considered the report of the United Nations Commission on International Trade Law on the work of its thirteenth session,

Recalling its resolutions 2205(XXI) of 17 December 1986, by which it established the United Nations Commission on International Trade Law and defined the object and terms of reference of the Commission, 3108(XXVIII) of 12 December 1973, by which it increased the membership of the Commission, 31/99 of 15 December 1976, by which Governments of Member States not members of the Commission were entitled to attend as observers the sessions of the Commission and its working groups, and 34/142 of 17 December 1979, by which the co-ordinating function of the Commission in the field of international trade law was emphasized, as well as its previous resolutions concerning the reports of the Commission on the work of its annual sessions,

Recalling also its resolutions 3201 (S-VI) and 3202(S-VI) of 1 May 1974, 3281(XXIX) of 12 December 1974 and 3362 (S-VII) of 16 September 1975,

Reaffirming its conviction that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would significantly contribute to universal economic co-operation among all States on a basis of equality, equity and common interests and to the elimination of discrimination in international trade and, thereby, to the well-being of all peoples,

Having regard for the need to take into account the different social and legal systems in harmonizing the rules of international trade law,

Stressing the usefulness and importance of organizing symposia for promoting better knowledge and understanding of international trade law and, especially, for the training of young lawyers from developing countries in this field,

1. Takes note with appreciation of the report of the United Nations Commission on International Trade Law on the work of its thirteenth session;

2. Takes note of the successful conclusion of the United Nations Conference on Contracts for the International Sale of Goods, held at Vienna from 10 March to 11 April 1980, which has resulted in the adoption of the Convention on Contracts

for the International Sale of Goods and a Protocol amending the Convention on the Limitation Period in the International Sale of Goods:

3. Commends the United Nations Commission on International Trade Law for the progress made in its work and for its efforts to enhance the efficiency of its working methods;

4. Notes with satisfaction that the United Nations Commission on International Trade Law has unanimously adopted the Conciliation Rules of the Commission;

5. Calls upon the United Nations Commission on International Trade Law to continue to take account of the relevant provisions of the resolutions concerning the new international economic order, as adopted by the General Assembly at its sixth and seventh special sessions;

6. Welcomes the decision of the United Nations Commission on International Trade Law to the effect that its Working Group on the New International Economic Order shall be composed of all States members of the Commission;

7. Takes note with appreciation of the fact that the United Nations Commission on International Trade Law has welcomed the recommendation of the Working Group on the New International Economic Order concerning subject-matters to be included in the programme of work of the Commission and endorses the decision of the Commission that preparatory work be carried out in respect of contracts on supply and construction of large industrial works and on industrial co-operation;

8. Reaffirms the mandate of the United Nations Commission on International Trade Law in co-ordinating legal activities in the field of international trade law;

9. Recommends that the United Nations Commission on International Trade Law should:

(a) Continue its work on the topics included in its programme of work;

(b) Continue its work on training and assistance in the field of international trade law, taking into account the special interests of the developing countries;

(c) Maintain close collaboration with the United Nations Conference on Trade and Development, the International Law Commission and the United Nations Industrial Development Organization and continue to collaborate with international organizations active in the field of international trade law;

(d) Continue to maintain liaison with the Commission on Transnational Corporations with regard to the consideration of legal problems that would be susceptible of action by the United Nations Commission on International Trade Law;

10. Expresses its appreciation to all States which have offered to make contributions to the holding at Vienna in 1981 of the second symposium on international trade law of the

United Nations Commission on International Trade Law on the occasion of the fourteenth session of the Commission:

11. Appeals to other States and to organizations, institutions and individuals to make similar contributions so that the number of participants in the second symposium from developing countries might be increased;

12. Reaffirms the importance of the legal work that is being undertaken by the United Nations Commission on International Trade Law and of the increased role of the International Trade Law Branch of the Office of Legal Affairs of the Secretariat as the substantive secretariat of the Commission and, in this connexion:

(a) Recognizes the relevance of summary records for the legislative history of United Nations treaties, conventions and other texts of a legal character and emphasizes the advisability of continuing the practice of drawing up complete summary records for meetings of the Commission that are devoted to the preparation of draft conventions or other legal instruments;

(b) Requests the Secretary-General to earmark, out of the funds allocated to the common library of the Vienna International Centre, such an amount as is necessary for the maintenance of the law library of the Commission and for the acquisition of materials that are required in the context of the programme of work of the Commission;

(c) Appeals to Governments to contribute to the law library of the Commission at Vienna legal materials which are relevant to the work of the Commission, including official journals, gazettes and legislative texts;

(d) Further appeals to Governments to provide the secretariat of the Commission with relevant materials pertaining to arbitration procedure so that it can complete its work on a model law on arbitral procedure;

13. Requests the Secretary-General to forward to the United Nations Commission on International Trade Law the records of the discussion at the thirty-fifth session of the General Assembly relating to the report of the Commission on the work of its thirteenth session.

Other documents

United Nations Commission on International Trade Law Yearbook, Vol. X: 1979. U.N.P. Sales No.: E.81.V.2; Vol. XI: 1980. U.N.P. Sales No.: E.81.V.8.

UNCITRAL Conciliation Rules. U.N.P. Sales No.: E.81.V.6. A/CN.9/176. Report of Working Group on New International Economic Order on work of its session, Headquarters, New York, 14-25 January.

A/CN.9/181. Report of Working Group on International Negotiable Instruments on work of its 9th session, Headquarters, New York, 2-11 January.