

III. MULTINATIONAL ENTERPRISES

Note by the Secretary-General (A/CN.9/148)*

1. At its eighth session, the United Nations Commission on International Trade Law (UNCITRAL), having considered what steps would be appropriate in respect of the subject-matter of multinational enterprises, took note of the establishment by the Economic and Social Council of the Commission on Transnational Corporations. UNCITRAL decided to inform the Chairman of the Commission on Transnational Corporations that it had not taken a definitive decision concerning its programme of work in the field, but would continue to keep the subject under review, pending the identification by the Commission on Transnational Corporations of specific legal issues that would be susceptible to action by UNCITRAL, and that it would favourably consider any request which the Commission on Transnational Corporations might wish to address to UNCITRAL.¹

2. In accordance with this decision the Chairman of UNCITRAL addressed a letter, dated 16 April 1975, to the Chairman of the Commission on Transnational Corporations. The text of this letter is reproduced in annex I to this report.

3. By a letter dated 9 May 1977, Mr. Abdelmadjid Fasla, Chairman of the Commission on Transnational Corporations, replied to the above letter of the Chairman of UNCITRAL. The text of this letter is reproduced in annex II to this note.

ANNEX I

Letter dated 16 April 1975 from the Chairman of the United Nations Commission on International Trade Law addressed to the Chairman of the Commission on Transnational Corporations

I have the honour to refer to resolution 2928 (XXVII) adopted by the General Assembly at its twenty-seventh session on 28 November 1972 and at the request of the United Nations Commission on International Trade Law (UNCITRAL), to invite your attention, and through you, Mr. Chairman, the attention of the Commission on Transnational Corporations, to the following.

The General Assembly in paragraph 5 of the resolution to which I referred invited UNCITRAL "to seek from Governments and interested international organizations information relating to legal problems presented by the different kinds of multinational enterprises, and the implications thereof for the unification and harmonization of international trade law, and to consider, in the light of this information and the results of the available studies, including those by the International Labour Organisation, the United Nations Conference on Trade and Development and the Economic and Social Council, what further steps would be appropriate in this regard".

Pursuant to this mandate, UNCITRAL has had a questionnaire addressed to Governments and interested international organizations concerning legal problems presented by multinational enterprises, and the implications thereof for the unification and harmonization of international trade law. On the basis of a report of the Secretary-General (A/CN.9/104),* which analysed, *inter alia*, the replies to this

questionnaire, UNCITRAL, at its eighth session, held in Geneva from 1 to 17 April 1975, considered proposals for work which it might undertake pursuant to its mandate in this field. In this connexion it received with interest information concerning the proposed programme of work of your Commission and of the Information and Research Centre on Transnational Corporations.

During its session UNCITRAL considered the following courses of action. First, in view of the complex nature of the subject, involving not only legal issues but also issues of an economic, social and political character which may have a bearing on the formulation of legal rules, UNCITRAL would wish to follow closely the work of the Commission on Transnational Corporations and the studies of the Information and Research Centre on Transnational Corporations, with particular attention to the identification by your Commission and by the Information and Research Centre of issues that would be susceptible of action by UNCITRAL.

Secondly, UNCITRAL considered, among the suggestions made in respect to a programme of work in the field of multinational enterprises, the views expressed by many representatives that work could usefully be carried out by UNCITRAL on the following matters which seemed relevant directly or indirectly, in the context of international trade:

(a) The development of an information system. In this connexion several replies to the questionnaire addressed to Governments and interested international organizations had mentioned the need for standardized accounting procedures and statistical systems for specific data reporting. Some replies had suggested that an international convention should be formulated on the exchange of information, on disclosure, and on consultation and conciliation.

(b) The development of model rules, which States could embody in their national legislation with a view to exercising a greater degree of control over the activities of multinational enterprises. In this connexion, the possibility of requesting the Secretariat to prepare a comparative study of legislative rules in company laws, investment laws etc., that are designed to elicit information about such activities was considered.

UNCITRAL has not taken a definitive decision concerning its programme of work in this field but will continue to keep the subject under review. It is the desire of the members of UNCITRAL that I bring to your attention this matter and to inform the Commission on Transnational Corporations that UNCITRAL will favourably consider any request in respect of work concerning legal aspects of questions relating to multinational enterprises which the Commission on Transnational Corporations may wish to address to it.

ANNEX II

Letter dated 9 May 1977 from the Chairman of the Commission on Transnational Corporations addressed to the Chairman of the United Nations Commission on International Trade Law

I have the honour to refer to the letter dated 16 April 1975 from the Chairman of the United Nations Commission on International Trade Law to the Chairman of the Commission on Transnational Corporations, reproduced in document E/C.10/7 of 6 May 1975, in which UNCITRAL informed us that it would favourably consider any request from our Commission in respect of work concerning legal aspects of questions relating to multinational enterprises.

* 23 February 1978.

¹ UNCITRAL, report on the eighth session (A/10017), para. 94 (Yearbook . . . 1975, part one, II, A).

* Yearbook . . . 1975, part two, VI.

At its third session the Commission on Transnational Corporations had before it resolution 31/99 in which the General Assembly "invites the Commission on Transnational Corporations, if it identifies specific legal issues in its programme of work that would be susceptible of action by UNCITRAL, to refer such issues to that Commission for its consideration".

The Commission on Transnational Corporations at its third session took note of that resolution and requested me, as its Chairman, to express its appreciation to your Commission for its offer of co-operation and to advise it that the Commission on Transnational Corporations would take advantage of that offer at the appropriate time.