



SUMMARY RECORD OF THE 5th MEETING

Chairman: Mr. CALLE y CALLE (Peru)

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AGENDA ITEM 117: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
ON THE WORK OF ITS FOURTEENTH SESSION (continued)

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The meeting was called to order at 10.45 a.m.

AGENDA ITEM 117: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS FOURTEENTH SESSION (continued) (A/36/17)

1. Mr. PUNO (Philippines) commended the efforts of UNCITRAL to draft a Convention on International Bills of Exchange and International Promissory Notes, and Uniform Rules on International Cheques. It was no easy task to draw up rules that would be acceptable in different countries. His delegation believed that the two subjects should be dealt with in separate texts, since special features in the use of cheques distinguished cheques from bills of exchange and promissory notes. He hoped that the Working Group on the subject could complete its work quickly so that UNCITRAL could review the two texts, taking into account the relevant comments of Governments.

2. At its fourteenth session UNCITRAL had discussed the question of a unit of account of constant value for use in international conventions. It might perhaps be desirable for the Working Group on International Negotiable Instruments to consider various possible formulations for a unit which could serve a point of reference in international conventions for expressing amounts in monetary terms, and to prepare a text enabling UNCITRAL to go into the question in more depth at its following session.

3. His delegation acknowledged the value of the Commission's work on the subject of international commercial arbitration. The UNCITRAL Arbitration Rules, which had been in effect for five years, played a vital role in international commercial relations and in the settlement of the disputes which inevitably resulted therefrom.

4. UNCITRAL should now undertake the preparation of a model law on arbitral procedure, in view of the difficulties arising in current arbitration practice and the need for a legal framework establishing equitable and rational settlement procedures for controversies stemming from international trade transactions. The task should be entrusted to the Working Group on International Contract Practices, which had completed its former mandate. His delegation hoped that the Commission would give the topic due priority in its programme of work.

5. He commended the Working Group on the New International Economic Order on having undertaken a study of contracts for the supply and construction of large industrial works. The question was extremely important to the development plans of many countries, especially those in the third world. The many problems and disputes which arose in the performance of contracts were often caused by imperfectly drafted contractual provisions. His delegation therefore looked forward with great interest to the drafting of a legal guide systematically identifying the legal issues involved in contracts for the supply and construction of industrial plants. The guide would be particularly useful for the developing countries, which did not always have experts with the necessary degree of expertise for negotiating such complex contracts.

(Mr. Puno, Philippines)

6. He thanked the States which had contributed towards the costs of the Second UNCITRAL Symposium on International Trade Law. It was to be hoped that such contributions would allow the Commission to carry out its programme of training and assistance which was so vitally important to the developing countries.
7. Mr. JOVANIC (Yugoslavia) said that, despite the size and complexity of the agenda for its fourteenth session, UNCITRAL had fulfilled its task and carried out the mandate given to it by the General Assembly in resolution 2205 (XXI) of 16 December 1966. His delegation had already had an opportunity to make known its views on the different topics dealt with by the Commission both within UNCITRAL and in its working groups, and would confine its comments to two items of particular importance for developing countries.
8. UNCITRAL had devoted a lengthy discussion at its most recent session to the question whether the Working Group on the New International Economic Order should deal with the general questions posed by the supply and construction of large industrial works or focus on the problems of development which were of particular interest to the developing countries. His delegation wished to stress once again that the Working Group should draw up a legal guide on clauses dealing with the supply and construction of large industrial works, focusing on development problems, and thus contribute to the attainment of the objectives set out in paragraph 3 of General Assembly resolution 35/166.
9. The co-ordinating role of UNCITRAL was closely linked to the question of the new international economic order. Co-operation among the various bodies and international organizations in their activities relating to the new international economic order, both within and outside the United Nations system, was a sine qua non for the unification and harmonization of international trade law. Some very important United Nations bodies and international organizations were carrying out work in that relatively narrow sphere of international law. There was thus a considerable risk of duplication, and the problem of co-ordinating the work on the subject must accordingly be clearly defined. The wording of the provisions governing the co-ordinating function of UNCITRAL was inadequate, and that function was restricted, furthermore, in view of the Commission's mandate in the sphere of international private law. If UNCITRAL was to be able to fulfil its tasks it must be given progressively greater authority encompassing all activities connected with international trade law. Alternatively, serious consideration should be given to other means of ensuring the efficient co-ordination of the ever growing number of activities in that sphere.
10. His country, the initiator of the idea of contributions for training and assistance in international trade law, had made a contribution of \$US 3,000 shortly after the opening of the Second UNCITRAL Symposium on International Trade Law in Vienna. It hoped that its gesture would encourage other States to contribute to the organization of the Third Symposium, thus ensuring continuity in training activities.
11. Mr. VERENIKIN (Union of Soviet Socialist Republics) said that Mr. Gromyko, the Soviet Minister for Foreign Affairs, addressing the seventh plenary meeting

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(Mr. Verenikin, USSR)

of the General Assembly at its current session, had stressed that the developed capitalist States would have to undergo a radical change of attitude towards the developing countries, refrain from any discrimination in their relations with them and cease their economic plundering of those countries before any true North-South dialogue could begin. One of the most important topics discussed by UNCITRAL at its most recent session concerned, precisely, the work of the Working Group on the New International Economic Order, which was currently examining the problem of turn-key and semi-turnkey contracts. UNCITRAL had stressed the value of drawing up a legal guide to the formulation of such contracts. In his delegation's view, it was very important to co-ordinate the activities of UNCITRAL in that field with those of other competent bodies and organizations, in particular UNIDO. He noted with satisfaction that UNCITRAL and UNIDO had stated that they were willing to co-operate and were planning specific measures to co-ordinate their work so as to avoid duplication. It would be useful for the UNCITRAL secretariat to take into account for that purpose the intergovernmental agreements, contract practice and other pertinent documents of the Council for Mutual Economic Assistance (CMEA), which reflected the special features of the socialist legal system.

12. His delegation hoped that UNCITRAL would take a decision at a later session on the report of the Working Group on International Contract Practices, which had drawn up a set of uniform rules on liquidated damages and penalty clauses, in the light of the views expressed by Governments and the international organizations concerned. His delegation believed that the draft rules should be adopted in the form of a convention rather than a recommendation, that being the most effective way to unify international trade law on the matter.

13. Any guidelines for administering the UNCITRAL Arbitration Rules must be purely voluntary. They could be used not only by permanent arbitration bodies but by other, similar organizations that so wished as well, including chambers of commerce. He felt that the guidelines would make it possible to avoid discrepancies in the application of the Arbitration Rules and would give the parties an opportunity to become more familiar with the administrative procedures involved.

14. His delegation was pleased to note that UNCITRAL was about to complete a task in which it had been engaged for several years, namely, the preparation of a draft Convention on International Bills of Exchange and International Promissory Notes, and Uniform Rules on International Cheques.

15. Paragraph 113 of the UNCITRAL report, concerning the status of Conventions, contained an interesting recommendation. However, he did not agree with the wording of paragraph 1 (b) and paragraph 2 of the recommendation, which dealt with questions within the exclusive competence of sovereign States, namely, the signing and ratification of and accession to Conventions drawn up on the basis of UNCITRAL drafts.

16. Mr. MEISSNER (German Democratic Republic) said that his delegation attached particular importance to the work of the Working Group on the New International Economic Order, which should constitute a major contribution towards the democratic

(Mr. Meissner, German
Democratic Republic)

restructuring of international economic relations. In dealing with specific projects and subjects, the Working Group must ensure the concrete application of the democratic principles contained in the United Nations Charter and other instruments of international law. In common with the majority of States Members of the United Nations, the German Democratic Republic regarded the Charter of Economic Rights and Duties of States and the resolutions adopted at the sixth special session of the General Assembly on the establishment of a new international economic order as being of fundamental importance to that work. With special reference to clauses relating to contracts for the supply and construction of large industrial works, he said that the German Democratic Republic, as an exporter and importer of such works, was well aware of the interests of contracting parties and believed that the preparation, within the framework of the United Nations system and taking into consideration all interests involved, of fair guidelines for the formulation of contracts would be of great practical value.

17. The UNCITRAL Arbitration Rules were of appreciable significance in international business relations. The drafting of a model law on arbitral procedure would help to promote arbitration as a method of settling disputes. The German Democratic Republic had introduced new provisions in its legislation in that field. The possibility of contractual agreement on procedure by arbitration, already provided for in the previous Civil Code, had been supplemented and adjusted to current conditions in international trade and economic relations by the adoption of the Arbitration Decree of 18 December 1975. It was also well known that the States members of CMEA had acceded to the Convention on Arbitration in Civil Actions Resulting from Relations of Economic and Technico-Scientific Co-operation of 26 May 1972. For all those reasons, the German Democratic Republic could and would give effective support to UNCITRAL's activities in the field of arbitration. His country was also in favour of the application of the guidelines for administering arbitrations under the UNCITRAL Arbitration Rules as contained in document A/CN.9/189. The competent body in the German Democratic Republic was the Board of Arbitration of the Chamber of Foreign Trade.

18. His delegation also appreciated the co-ordination activities referred to in documents A/CN.9/202 and A/CN.9/203, which demonstrated UNCITRAL's continuous efforts to improve the effectiveness of its work. It was also gratifying that discussions on that subject had taken place within UNCITRAL, during which representatives of international organizations had expressed their readiness to support UNCITRAL's work and to co-operate with the Commission.

19. In conclusion, his delegation would like to emphasize that ratification of or accession to the United Nations Convention on Contracts for the International Sale of Goods of 1980 by as many States as possible would have a positive influence on the development of trade and co-operative relations between States, enterprises and individuals. The question of a legal order to be applied to commercial contracts was of great practical importance. Many difficulties resulted from the fact that one of the contracting parties felt itself at a

(Mr. Meißner, German
Democratic Republic)

disadvantage. If the above-mentioned Convention was applied in international sales, contract negotiations could be facilitated and legal security enhanced. The German Democratic Republic therefore supported UNCITRAL's decision at its fourteenth session to suggest to the General Assembly that the Convention should be brought to the notice of all States. For its part, it had signed the Convention on 13 August 1981.

20. Mr. HAKAPAA (Finland), speaking on behalf of the delegations of Denmark, Finland, Iceland, Norway and Sweden, recalled that the Nordic delegations had expressed satisfaction on the conclusion of the United Nations Conventions on the Carriage of Goods by Sea and on Contracts for the International Sale of Goods. They found encouraging the number of signatures to those Conventions and the number of States which had announced that they were in the process of preparing legislation to satisfy them. The Nordic delegations also supported the procedure indicated in paragraph 118 of the report in order to gain the widest possible acceptance of the Conventions.

21. In the view of the Nordic delegations, action aimed at enabling the developing countries to defend their rights and to strike an equitable balance between the different interests involved served the objectives of the new international economic order. The preparation of a legal guide to the different clauses appearing in contracts for the supply and construction of large industrial works might not seem very dramatic, but it would doubtless be very useful for parties entering into such contracts. The guide should be based on current practices, should deal candidly and in detail with the issues involved and should give recommendations to the parties in terms of warning them of potentially abusive clauses. The guide would then make a great contribution to UNCITRAL's efforts to put the principles of the new international economic order into practice.

22. With respect to further work on the draft Convention on International Bills of Exchange and International Promissory Notes, and Uniform Rules on International Cheques, the Nordic States were in favour of expediting matters. The Working Group on International Negotiable Instruments should be asked to prepare final texts. All comments should be submitted to UNCITRAL, which should be given sufficient time to consider the final drafts. It would also seem appropriate that the drafts should be adopted at a diplomatic conference; in view of the complexity of the subject-matter, which required the presence of experts, the Nordic delegations did not think that the Sixth Committee was the most appropriate forum for consideration of such texts. However, there was no reason generally to exclude less technical and less complicated instruments emanating from UNCITRAL from being submitted for consideration by the General Assembly.

23. UNCITRAL's work on arbitration was of a high standard, and the Nordic delegations welcomed the decision to start preparing a model law on arbitral procedure.

24. Mr. BUBEN (Byelorussian Soviet Socialist Republic) noted that, at its last session, UNCITRAL had devoted particular attention to the question of uniform

(Mr. Buben, Byelorussian SSR)

rules on liquidated damages and penalty clauses. His delegation considered that such rules should be embodied in a convention, which would further promote the unification of international trade law on that subject.

25. With respect to the draft Convention on International Bills of Exchange and International Promissory Notes, and Uniform Rules on International Cheques, he regretted that UNCITRAL had decided, somewhat prematurely, that the provisions relating to international bills of exchange and international promissory notes and those relating to international cheques should be dealt with in two separate texts. He also regretted that UNCITRAL had decided to embark upon the final stage of the codification of rules in that field when the necessary preparatory work had not yet been completed.

26. As to the problems involved in international commercial arbitration, the Byelorussian SSR considered it necessary to include in the guidelines on arbitral procedure which UNCITRAL intended to prepare provisions stressing the optional nature of the guidelines and the fact that they could be used not only by arbitral institutions but also by chambers of commerce.

27. The position of the socialist countries regarding the new international economic order was well known; they actively supported the developing countries in their struggle to bring about the restructuring of international economic relations on a fair and equitable basis. His delegation wished to emphasize once again its view that, when drafting the legal guide on provisions relating to contracts for the supply and construction of large industrial works, UNCITRAL should take into account the practice of concluding intergovernmental agreements which was very common in economic relations between socialist countries and developing countries. During the deliberations on the new international economic order, stress had been placed on the need to avoid any overlapping of the work of UNCITRAL with that of other international organizations and to strengthen the co-ordination of those activities. His delegation supported the measures which UNCITRAL had taken to that end and believed that the Commission should consider the question of the progressive development of the norms of international law relating to the new international economic order, which was on the agenda of the Sixth Committee.

28. On the question of the status of Conventions drawn up on the basis of UNCITRAL drafts, his delegation supported paragraph 1 (a) of the recommendation in paragraph 118 of the report, which suggested that those Conventions should be brought to the notice of all States which had not ratified or acceded to them. However, paragraph 1 (b) of the recommendation, which would require States to indicate their intentions with regard to ratification or accession to the Conventions within a specified period of time, did not seem justified, since it related to matters exclusively within the domestic competence of each State.

29. Mr. MITZELBURG (Federal Republic of Germany) said that, given the diversity of legal and economic systems represented in UNCITRAL, the Commission had been remarkably successful in its efforts to promote the harmonization and unification

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(Mr. Mitzelburg, Germany)

of international trade law by co-ordinating all international work performed in that area and by elaborating its own proposals and recommendations.

30. His Government welcomed the decisions taken by UNCITRAL during its fourteenth session, and in particular the decisions on how to proceed with a number of complex and economically significant issues, such as international bills of exchange and promissory notes and international cheques, uniform rules on liquidated damages and penalty clauses, and the preparation of a model law on arbitral procedure.

31. His Government was gratified to note that UNCITRAL had also succeeded in contributing to the implementation of the new international economic order. Its Working Group on the subject was engaged in the discussion of clauses relating to contracts for the supply and construction of large industrial works and had already achieved encouraging results, which showed how the new international economic order could be translated step by step into reality by substantive legal work on clearly defined economic issues.

31a. The Federal Republic of Germany welcomed UNCITRAL's decision to further enhance its co-operation and co-ordination with other bodies and organizations, which would certainly improve its ability to participate in preparing solutions which served the interests of all nations.

32. Mr. CASTRO VILLALOBOS (Mexico) welcomed the progress made in preparing a draft Convention on International Bills of Exchange and International Promissory Notes, and Uniform Rules on International Cheques, and said that his delegation was in favour of making those texts the subject of two separate instruments. Concerning the different views as to the procedure to be followed reflected in paragraph 17 of the report, his delegation believed that it was for UNCITRAL to take a decision on the matter.

33. His delegation was surprised to see that, according to paragraph 21 of the report, it had been agreed that the text would be adopted at a diplomatic conference, and not by the General Assembly upon a recommendation by the Sixth Committee. In the first place, it was generally accepted that the convening of a diplomatic conference, quite apart from its high cost, was not in present circumstances the best means of codifying existing law, since the age of large-scale international conferences of plenipotentiaries seemed to be over. Secondly, as had been evident at the most recent international codification conferences, many third world countries had great difficulty in sending delegations to that type of conference. Thirdly, the Sixth Committee had already shown that it could very well serve as a substitute for a diplomatic conference.

34. It would be premature to take a decision on the question of the universal unit of account for international conventions; in his view, further studies were required to establish the usefulness of any future codification.

35. His delegation attached great importance to the issues involved in electronic funds transfer, which the international community ought to regulate by means of

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(Mr. Castro Villalobos, Mexico)

clear and precise rules. The subject was one which demanded the greatest imagination on the part of jurists, since there were no precedents.

36. His delegation believed that the Sixth Committee should eventually study the draft uniform rules on liquidated damages and penalty clauses and take whatever decision it deemed appropriate.

37. The question of clauses protecting parties against the effects of currency fluctuations should be the subject of further studies in order to determine to what extent it would be wise to consider codifying them.

38. As to the guidelines relating to the UNCITRAL Arbitration Rules, it was necessary to make a clear distinction between the application of the Rules and any modification of them, which could not be contemplated. In any event, UNCITRAL should take a decision clarifying that point.

39. His delegation was fully in favour of the suggestion concerning the drafting of a model law on arbitral procedure, provided that its scope of application, the arbitral procedure, the form of awards and the selection of arbitrators were all clearly defined, so that the model law would meet the present needs of international trade and would not become one of those legal instruments which proved to be entirely superfluous.

40. His delegation accorded considerable importance to the concept of the new international economic order, since it regarded the restructuring of the international community as irreversible. As a specialized legal body competent to deal with questions of international trade law, UNCITRAL should steer clear of those legal aspects of the new international economic order which were the subject of endless political controversy. It would be unwise for the Commission to deal with aspects of the new international economic order involving relations under public international law, which were not within its competence. If it were to do so, it would in no way be serving the interests of the new international economic order and would provoke fresh controversies detrimental to the achievement of that objective. UNCITRAL would play a useful role in that area if it concentrated mainly on the aspects of international trade law relating to the new international economic order - in other words, if it remained within the limits of the mandate given to it by the General Assembly.

41. Mr. DE STOOP (Australia) said that the item relating to the new international economic order undoubtedly constituted the most important task on UNCITRAL's programme of work. His country believed that the best way for UNCITRAL to carry out its mandate from the General Assembly of promoting the harmonization and unification of international trade law in the interests of developing countries was to undertake work on specific trade law topics which furthered the interests of developing nations. The negotiation of contracts for the supply and construction of large industrial works was one such topic, given the importance of the process of industrialization for developing countries. The decision to prepare a legal guide in that field presented UNCITRAL with the opportunity to make a positive contribution, and the progress achieved by the Working Group at its second session promised well for the future.

(Mr. de Stoop, Australia)

42. With regard to co-ordination of work, his delegation welcomed UNCITRAL's initiatives aimed at co-ordinating the work of various international organizations in the field of international trade law. The growing trend towards greater co-ordination was illustrated by the fact that observers from various international organizations had informed the fourteenth session of UNCITRAL about the work of their organizations in the field of international trade law and had indicated a willingness to co-operate with UNCITRAL wherever possible. Thus, organizations such as the Hague Conference on Private International Law and the International Institute for the Unification of Private Law (UNIDROIT) had decided to open up their work on certain projects of international interest to outside co-operation by inviting UNCITRAL members which were not members of those organizations to participate in their work. That would enable a broader range of views, especially those of developing countries, to be considered when draft instruments were prepared on those topics. Such participation should also enhance the prospects for adoption of instruments resulting from such work and hence ease the pressure on UNCITRAL to undertake work itself in those areas.

43. His delegation supported UNCITRAL's co-ordinating efforts not only because they lessened the possibility of duplication but also, more importantly, because they enhanced the prospects for increased harmonization and unification in the field of international trade law.

44. Mr. MARDAN (Iraq) said that his country wished to pay tribute to UNCITRAL for the quality of its work and for its efforts to preserve a balance between the trade and economic interests of different States. In that connexion, UNCITRAL's activities were a model of international legal work.

45. The report under consideration did not deal with questions of substance but was limited to reviewing the work of UNCITRAL's fourteenth session, which had been devoted exclusively to procedure and working methods. That in no way detracted from the value of the report, however, for without appropriate procedures and working methods it would be impossible to arrive at valid decisions on substantive legal issues.

46. With regard to the question of international payments, his delegation welcomed the work done to prepare a draft Convention on International Bills of Exchange and International Promissory Notes and to draw up Uniform Rules on International Cheques. Bills of exchange and promissory notes differed from international cheques, particularly in countries like his own whose legal system was based on Roman law. His delegation was therefore among those which believed that the draft Convention and the Uniform Rules should constitute two separate instruments.

47. With regard to the establishment of a universal unit of account for international conventions, his delegation hoped that the Study Group on International Payments would be able to submit a document on that issue, which was of vital monetary importance to all States, particularly the developing countries.

(Mr. Mardan, Iraq)

48. His delegation believed that the uniform rules on liquidated damages and penalty clauses should take the form of a model law.
49. With regard to the question of clauses protecting parties against the effects of currency fluctuations, his delegation hoped that the Secretariat would be able to complete its study and report to UNCITRAL so that the latter could reach agreement on the wording of such clauses.
50. With regard to international commercial arbitration, his delegation endorsed UNCITRAL's decision to contemplate issuing guidelines in the form of recommendations to arbitral institutions and other relevant bodies to help them establish procedures for acting as appointing authority or providing administrative services in cases conducted under the UNCITRAL Arbitration Rules. He hoped that, at its next session, UNCITRAL would be able to find the most appropriate wording for the guidelines, taking into account the text which the Secretariat had been asked to prepare. His delegation was also convinced that UNCITRAL's preparatory work for the preparation of a model arbitration law would greatly help to reduce the number of international trade disputes by establishing a balance between the parties concerned.
51. His delegation welcomed the interest shown by the Commission in the problems of developing countries in its work on the new international economic order. Political and legal problems in that field were indissolubly linked and, as chapter V of the report indicated, UNCITRAL had rightly taken into account the views and aspirations of the developing countries. He hoped that UNCITRAL would successfully complete its study on clauses related to contracts for the supply and construction of large industrial works and its preparation of the legal guide identifying the legal issues involved in such contracts.
52. His delegation wished to reaffirm the importance which it attached to co-ordinating the work of UNCITRAL with that of other bodies competent in international trade law in order to unify that branch of international trade law.
53. With regard to training and assistance in the field of international trade law, he hoped that UNCITRAL would be able to continue to hold symposia. The latter were vital for publicizing its work and training jurists specialized in international trade law. He congratulated the Secretariat on its efforts to establish contacts with regional organizations with a view to holding international trade law seminars. Finally, he endorsed the decision of UNCITRAL set forth in paragraph 118 of the report, which was designed to encourage States to ratify or accede to the Conventions drafted on the basis of UNCITRAL's work.
54. Mr. EL-BANHAWI (Egypt), referring to the question of international payments, said that his country had always been in favour of making a distinction between the draft Convention on International Bills of Exchange and International Promissory Notes and the Uniform Rules on International Cheques. It fully endorsed the analysis contained in paragraphs 14 and 15 of the report. Egypt's competent authorities would formulate their comments and observations on the two drafts in greater detail, comparing them with the texts of the 1930 and 1931

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(Mr. El-Banhawi, Egypt)

Geneva Conventions. His delegation shared the view that UNCITRAL's work in that area would be expedited if the competent Working Group revised the draft instruments. It also believed that such instruments should be submitted to a diplomatic conference so that specialists could produce a final draft. In that connexion, he endorsed the decision of UNCITRAL recorded in paragraph 2 of the report.

55. His delegation congratulated UNCITRAL on its efforts to establish a universal unit of account for international conventions. It also commended the part played by the International Monetary Fund in that connexion. Those joint efforts had made it possible to identify the problems arising in that area. The issue was closely linked to that of clauses protecting parties against the effects of currency fluctuations. The Working Group entrusted with that question had prepared a report (A/CN.9/200) which his delegation viewed as a basic document which the Secretariat should take into account when preparing the study requested of it.

56. With regard to the legal problems created by electronic funds transfers, his delegation believed that the question of such transfers should be given due attention since it was extremely important for all countries and not just the advanced industrial countries. In that connexion, the report did not make it clear what results the UNCITRAL Study Group on International Payments had arrived at at its August 1981 meeting.

57. His delegation would comment on international trade contracts, and more precisely the form to be taken by the uniform rules on liquidated damages and penalty clauses, at a later stage and provide the information requested by UNCITRAL. The same applied to the question of whether priority should be given to a conference of plenipotentiaries or to the Sixth Committee. In principle, given the specialized nature of the issues under consideration, a special conference should perhaps be convened to adopt the rules in question.

58. Egypt had already emphasized the link between the question of clauses protecting parties against the effects of currency fluctuations and the question of establishing a universal unit of account for international conventions. It was useful to stress, as in paragraph 49 of the report, how important that was to the developing countries. Egypt believed that every contract should specify the exchange rates applicable during a given period.

59. Egypt welcomed the work done by UNCITRAL in the field of international commercial arbitration with a view to extending the use of such arbitration. It also welcomed UNCITRAL's efforts to prepare guidelines in the form of recommendations to assist arbitral institutions in formulating rules which, as indicated in paragraph 57 of the report, would be consistent with the UNCITRAL Arbitration Rules and have sufficient flexibility.

60. His delegation fully supported UNCITRAL's efforts to elaborate a model law on arbitral procedure, taking into account, as indicated in paragraph 69 of the report, the different economic and legal systems of the world and the question of equitable geographical distribution.

(Mr. El-Banhawi, Egypt)

61. Egypt also commended UNCITRAL's activities relating to the new international economic order. While it was not opposed to the publication of a legal guide on clauses related to contracts for the supply and construction of large industrial works, it believed that such a guide must be accompanied by explanatory notes highlighting the links between such clauses and the fundamental principles of the new international economic order. The participation of UNIDO was important in that field, particularly with regard to industrial co-operation contracts.

62. The question of training and assistance in the field of international trade law was undoubtedly of the highest importance, particularly to developing countries without sufficient expertise in that area. Egypt was grateful to all States which had made the Second UNCITRAL Symposium possible through their financial contributions or by sending lecturers and experts. Egypt hoped that the training and assistance programme would grow and make an appreciable contribution to the unification of international trade law.

63. As to the status of conventions that were the outcome of work carried out by UNCITRAL, document A/CN.9/205/Rev.1 showed that there had been very few ratifications or accessions. Egypt, for its part, had ratified or acceded to several of those conventions. The competent national authorities were currently considering the measures to be taken with a view to Egypt's ratification of or accession to the other conventions. His delegation appealed to all States to ratify or accede to those instruments, which played an immense role in strengthening international trade links, in the interests of increased international co-operation and prosperity.

64. In view of the international importance of the People's Republic of China, Egypt welcomed that country's expressed desire to become a member of UNCITRAL.

65. Mr. FERNANDEZ (Chile) said that his delegation had participated actively in the work of UNCITRAL, of which it was a member, and in the work of the various Working Groups, for it intended to spare no effort to bring about the unification of international trade law and to remove gradually the legal obstacles to the development of international trade.

66. Accordingly, Chile had adopted an economic policy of openness in respect of international trade by increasing its non-traditional exports, removing protectionist barriers and bringing its internal legislation into line with the provisions of international instruments to which it had become a party. In that connexion, his delegation wished to stress the importance it attached to the acceptance of the United Nations Convention on the Carriage of Goods by Sea, which marked a real step forward in the unification of the norms of international trade law, inasmuch as it rectified some of the omissions of the 1974 Brussels Rules and provided for relations among the various interested parties on a more balanced and a more equitable basis.

67. His delegation believed that UNCITRAL's work with respect to international commercial arbitration was of immense importance. The guidelines and the model law on arbitral procedure which UNCITRAL was considering elaborating would promote the

(Mr. Fernandez, Chile)

development of international trade by affording solutions to problems that could still hamper trade relations between different countries.

68. His delegation attached particular importance to the work done by the Working Group on the New International Economic Order at its June session. Chile, which had participated in the work of the Working Group on International Negotiable Instruments, also wished to commend that Working Group on its diligence with respect to, inter alia, the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Uniform Rules on International Cheques.

69. His delegation wished to stress the importance of co-ordination between the organizations of the United Nations system and UNCITRAL; it unreservedly supported the provisions of General Assembly resolutions 35/51 and 35/52. The same kind of co-ordination could be established with the Inter-American Juridical Committee, under whose auspices there had been two inter-American conferences on private international law (CIDIP I and CIDIP II), which had adopted instruments relating to international bills of exchange, international promissory notes, international cheques, trading companies and the application of protective measures.

70. His delegation, which fully supported the holding of symposia and seminars on international trade law, was grateful to those countries that had generously helped to finance such symposia and seminars. It hoped that those activities would continue with a view to promoting awareness of the importance of trade law in international relations.

71. Mr. OKWONGA (Uganda) said that his delegation attached great importance to UNCITRAL's work relating to the legal aspects of the new international economic order, in particular the work on contractual provisions relating to contracts for the supply and construction of large industrial works. In that connexion, UNCITRAL should be guided by the principles set forth in the relevant General Assembly resolutions. His delegation therefore supported paragraph 78 of the report. It also supported UNCITRAL's decision that a legal guide should be prepared, but without prejudice to the right of Governments to determine its final form. As to the content of the guide, it should concentrate on those legal problems which the developing countries faced in contracts for the supply and construction of large industrial works. The guide should therefore assist those countries in identifying unfavourable clauses, as stated in paragraph 80 of the report.

72. His delegation agreed that the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Uniform Rules on International Cheques should form two separate texts. It endorsed the view that UNCITRAL should circulate those texts, with commentary, to all interested Governments, but believed that, in the light of Governments' comments, the texts should be revised by UNCITRAL as a whole, not by its Working Group. Entrusting the Working Group with that task would not necessarily produce quick results, because delegations not represented in the Working Group might again raise questions which were supposed to have been settled by the Group. While it was true that members of UNCITRAL could attend the proceedings of the Working Group as

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(Mr. Okwonga, Uganda)

observers, because of budgetary constraints a number of delegations from developing countries might not be able to do so. His delegation believed that the instruments in question should be adopted by the General Assembly; that would prove less costly than adoption by a diplomatic conference and the representation of the developing countries would be higher.

73. His delegation welcomed UNCITRAL's decision to proceed with the work towards the preparation of a draft model law on arbitral procedure and to entrust that work to the Working Group on International Contract Practices. That model law should, however, take into account the principles of the new international economic order and should not leave it entirely to the parties to choose the place of arbitration.

74. His delegation wished to emphasize that there should be close co-ordination of the activities of the various organizations of the United Nations. Bodies such as UNIDO and UNCTAD should give further consideration to ways of avoiding duplication of work.

75. His delegation welcomed UNCITRAL's decision to continue training and assistance in international trade law; many developing countries had benefited from that programme through the granting of fellowships to enable their nationals to attend symposia and lectures organized by UNCITRAL. In that connexion, his delegation wished to thank the countries which had contributed to those fellowships. The idea of organizing regional seminars, as envisaged in paragraph 109 of the report, seemed wise because it would be cheaper to send experts to those seminars than to organize such gatherings in Vienna or New York. He appealed to the countries in a position to do so to contribute generously to that programme.

76. Mr. ANDERSON (United Kingdom) said that besides UNCITRAL there were currently many other international bodies concerned with the harmonization and unification of international trade law; in that connexion the Hague Conference on International Private Law, UNIDROIT, and even the International Law Commission could be singled out. In those circumstances, the danger of duplication of effort was that much greater, and it was therefore particularly gratifying to note that the UNCITRAL secretariat was about to undertake a study of areas where unification of international trade law would be appropriate and to make recommendations as to which organization could most usefully take the lead in that regard.

77. In the view of his Government, two of the most important subjects under study by UNCITRAL were the establishment of a system for determining a universal unit of account for international conventions and clauses to protect parties to commercial contracts against the effects of currency fluctuations. The need to study those two subjects, which were closely related, had been created by fluctuating exchange rates and high rates of inflation. A universal unit of account was especially important for conventions which laid down limits of liability. His Government found the recommendations in the report by the Secretary-General acceptable; but it was unfortunate that during the discussion of that report it had not been possible to reach agreement on an adjustment formula, which was of prime importance for the trader and the individual. The Secretariat should continue the study on

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(Mr. Anderson, United Kingdom)

clauses protecting parties against the effects of currency fluctuations, even if it was more difficult to find solutions to that problem given the need to balance the conflicting interests of creditor and debtor.

78. With respect to clauses relating to contracts for the supply and construction of large industrial works, his Government welcomed the fact that the Secretariat's study had been discussed at length by the competent Working Group. Problems which could have been very difficult had been avoided because of the Group's decision to concentrate on drawing up a legal guide rather than drafting model clauses; such clauses could be included later in the guide. The Commission had approved the work of the Working Group; and his Government approved the decisions of the Working Group regarding its future work.

79. His Government welcomed the fact that the Secretariat had decided to draft guidelines designed to assist arbitral institutions in formulating rules for the administration of arbitrations conducted under the UNCITRAL Arbitration Rules; by their very nature, such guidelines would have the advantage of not being binding on the person or body to whom they were directed. Although uniformity in the application of the UNCITRAL Arbitration Rules was clearly desirable, institutions also had to be able to adapt the rules to meet their own particular needs.

80. Mrs. MALIK (India) noted that the Working Group on International Negotiable Instruments had already completed its work on a draft Convention on International Bills of Exchange and International Promissory Notes and on draft Uniform Rules on International Cheques. At its latest session, held in August 1981, the Working Group had decided to change the title of the latter draft to draft Convention on International Cheques. Her delegation, which was a member of the Working Group, supported UNCITRAL's decision that two separate draft conventions should be drawn up on those two subjects. Once the comments of the Governments on the two draft Conventions had been received, UNCITRAL should consider them and revise the text, if appropriate, in the light of such comments. The Secretariat could assist UNCITRAL in that task by preparing an analytical study of such comments and by preparing draft revised texts taking those comments into account. Such a procedure would avoid delay in the finalization of the draft Conventions, which could then be submitted for adoption either by the General Assembly or by a diplomatic conference.

81. The Secretary-General's report entitled "Universal unit of account for international conventions" was a very useful document; it was to be hoped that the Working Group on International Negotiable Instruments, which had been entrusted with the task of considering various possibilities in regard to the formulation of a unit of account of constant value, would complete its work at an early date.

82. At its latest session, held in April 1981, the Working Group on International Contract Practices had completed its mandate to consider the feasibility of formulating uniform rules on liquidated damages and penalty clauses applicable to a wide range of international trade practices. At its fourteenth session, UNCITRAL had tried to determine whether such rules should take the form of a

(Mrs. Malik, India)

convention, recommendations or a model law. Her delegation supported UNCITRAL's decision to postpone discussion of that question to a later session. It also attached great importance to the subject of clauses protecting parties against the effects of currency fluctuations and would be looking forward to the study being prepared by the Secretariat on that question.

83. With regard to the guidelines which could assist arbitral institutions in formulating rules for administering arbitrations under the UNCITRAL Arbitration Rules, her delegation agreed with UNCITRAL that those guidelines could be issued in the form of recommendations and that they would help to avoid disparity in the application of those rules and to establish more definite procedures; it hoped that UNCITRAL would be able to adopt appropriate guidelines at its fifteenth session. With regard to the question of drafting a model arbitration law, her delegation hoped that the Working Group on International Contract Practices, which had been entrusted with the work, would take into account the 1958 New York Convention and the UNCITRAL Arbitration Rules, as well as the interests of developing countries, in particular.

84. She noted with satisfaction that the Working Group on the New International Economic Order had already considered 12 chapters of the Secretary-General's study entitled "Clauses related to contracts for the supply and construction of large industrial works" and felt that the work on that item should be undertaken within the context of the basic principles of the new international economic order and, in particular, should be directed to meeting the needs and aspirations of the developing countries.

The meeting rose at 1 p.m.