



SUMMARY RECORD OF THE 9th MEETING

Chairman: Mr. FERRARI-BRAVO (Italy)

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AGENDA ITEM 115: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS ELEVENTH SESSION (continued)

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The meeting was called to order at 11 a.m.

AGENDA ITEM 115: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS ELEVENTH SESSION (continued) (A/33/17, A/33/177; A/C.6/33/L.2 and L.3)

1. Mr. ENKUSAIKHAN (Mongolia) said the development of equitable and mutually advantageous international trade created a good basis for the establishment of stable relations between States and thus promoted the strengthening of international peace and security and the creation of an atmosphere of mutual confidence and understanding among nations. Furthermore, world trade, as an important instrument for the economic development of States, contributed to the attainment of one of the noble aims of the United Nations, that of promoting "social progress and better standards of life in larger freedom". Since its establishment, UNCITRAL had made a considerable contribution to the progressive development and unification of the law of international trade, as was demonstrated, inter alia, by the adoption of the United Nations Convention on the Carriage of Goods by Sea in March 1978.

2. The international sale of goods was one of the most important aspects of international trade, and he therefore viewed the completion of the Commission's work on the draft Conventions on that subject as a sign of major progress. He approved of the Commission's decision to integrate the two drafts into a single text entitled "Draft Convention on Contracts for the International Sale of Goods", consisting of three parts, which could be ratified separately, thus making the Convention more acceptable to countries with different legal systems. His delegation supported UNCITRAL's recommendation that the General Assembly should convene an international conference of plenipotentiaries to consider the draft integrated text, which could serve as a sound basis for the final elaboration of the Convention, although some of its provisions needed further examination and clarification. The conference should be authorized to consider the desirability of preparing a protocol on the limitation period in the international sale of goods.

3. The programme of work recommended by the Commission in paragraph 67 of its report was acceptable to his delegation as a framework, with the understanding that the Commission would pay due attention to the items still pending and that the list of items given in paragraph 67 did not predetermine the order of priorities. The Commission should give priority to the items dealing with questions concerning international public trade law governing relations among States. International public trade law, dealing with general principles and norms of State conduct, creates an appropriate legal framework for the development of international private law relations. Except for the International Law Commission, no other United Nations body was dealing with the problems of international public trade law, while the political and economic aspects of that subject had been widely treated in different international forums. In considering the issues relating to the legal implications of the new international economic order the term "legal implications" should be clarified. The word "implications" might be interpreted as referring to

(Mr. Enkusaikhan, Mongolia)

the "implied" legal meanings of the new international economic order, and as suggesting that the latter had already been established and that its legal consequences were being considered. His delegation would therefore suggest that the word "implications" should be replaced by the word "aspects". He hoped that the report which the Secretariat was to submit to UNCITRAL at its next session would facilitate the identification of the subject-matters with which the Commission might appropriately deal. No item should be referred to working groups until the Commission had decided that it was an appropriate item for unification and harmonization, and that the preparatory work was sufficiently advanced for a working group to take up the matter efficiently.

4. Regarding international payments, he hoped that the Working Group on International Negotiable Instruments would be able to produce a revised text of the draft uniform law on international bills of exchange and international promissory notes in the near future.

5. Mr. PANCARCI (Turkey) commended the report of UNCITRAL (A/33/17), which had become one of the most productive and necessary United Nations organs. He approved of having a single text covering both the formation of contracts and the international sale of goods, to be entitled "Draft Convention on Contracts for the International Sale of Goods". That draft could serve as a basis for the work of the future conference of plenipotentiaries. The conference itself could be convened in 1980 for five weeks, with the possibility of adding one week if necessary.

6. With regard to international payments, his delegation was pleased to learn that the Working Group on International Negotiable Instruments had made considerable progress in preparing draft provisions on international bills of exchange and international promissory notes, and supported the proposal of the Working Group that that draft should be entitled: "Draft Convention on International Bills of Exchange and International Promissory Notes" (A/33/17, para. 32). He hoped that the Working Group would be able to complete its work on the draft before the thirteenth session of UNCITRAL.

7. His delegation agreed with the view expressed in paragraph 43 of the Commission's report to the effect that the new programme of work should be composed of specific identified topics of global significance. However, absolute priority should be given to topics of special interest to developing countries. Since the establishment and maintenance of international peace and security depended on the elimination of the gap between the industrialized and the developing countries as well as on the attainment of general and complete disarmament, UNCITRAL's programme of work should take into account the relevant provisions of the resolutions adopted by the General Assembly at its sixth and seventh special sessions.

8. In paragraph 62 of its report, UNCITRAL had rightly stressed the need for effective co-ordination of the work of international organizations engaged in the unification of international trade law. UNCITRAL itself should perform that task, since it was best equipped to do so by reason of its nature and membership. However, the member States of those international organizations must themselves make the necessary efforts to avoid duplication.

(Mr. Pancarci, Turkey)

9. Regarding training and assistance in the field of international trade law, his delegation regretted the cancellation of the UNCITRAL symposium on international trade law which was to have been held in connexion with the tenth session, owing to lack of funds. The symposia on international trade law constituted a very valuable aspect of UNCITRAL's work, and the time had come for the Sixth Committee to stress that the symposia were indispensable and should be financed directly out of the regular budget of the United Nations.
10. His delegation noted with satisfaction that the United Nations Convention on the Carriage of Goods by Sea had been adopted and hoped that the Convention would receive widespread acceptance among Member States.
11. Mr. AL-ADOOFI (Yemen) welcomed the adoption of the United Nations Convention on the Carriage of Goods by Sea in Hamburg in March 1978. His Government was studying the clauses of the Convention with a view to signing it in the near future. His delegation approved of the draft Convention on the International Sale of Goods and agreed with the Commission's recommendation that a conference of plenipotentiaries should be convened with a view to adopting the draft Convention as quickly as possible. However, his delegation reserved the right to make any necessary comments on the draft.
12. His delegation had referred earlier to the importance of UNCITRAL's study of the resolutions and decisions adopted by the General Assembly at its sixth and seventh special sessions concerning the new international economic order. His delegation reaffirmed the importance of carrying through the studies undertaken on that question.
13. His delegation supported the idea of funding the UNCITRAL symposia directly from the regular budget of the United Nations, if voluntary contributions from States did not suffice to cover the costs, because the symposia were of major importance for the training of cadres in developing countries, in the interest of the promotion of better understanding of international trade law.
14. Mr. MEISSNER (German Democratic Republic) said that, as a member of UNCITRAL, his country attached great importance to the work done at the Commission's eleventh session, at which it had again succeeded in achieving results that could promote international trade relations as an important element in the process of détente.
15. His delegation welcomed the draft Convention on Contracts for the International Sale of Goods, which represented another positive aspect of the work done by UNCITRAL in the area of the unification and harmonization of international trade law and amounted to an almost exhaustive regulation of the international sale of goods, so that henceforth national legal provisions need be invoked only in exceptional cases. That corroborated an earlier assessment of the results of the tenth session of UNCITRAL, to the effect that the unification of the law governing the sale of goods among States having different socio-economic systems did better justice to the international aspects of those relations and reduced the legal insecurity arising from the existence of differing national legal systems. Inasmuch as that promoted the development of international trade and economic relations, it was a contribution through law to the implementation of peaceful coexistence between States having different socio-economic systems.

(Mr. Meissner, German Democratic Republic)

16. His delegation supported the recommendation to convene a conference of plenipotentiaries for the adoption of the Convention. It was his understanding that the organizational arrangements for that conference would be such that only one session would be required.
17. His delegation could agree to UNCITRAL's long-term programme of work, with regard to both the substance and the methods of work envisaged.
18. His delegation believed that the UNCITRAL symposia should be financed from voluntary contributions.
19. Mr. SERAFINI (Italy) said that Italy, although not a member of UNCITRAL, took great interest in its activities and intended to play an increasingly active part in its work. He congratulated UNCITRAL on the excellent quality of its work at its eleventh session, which paved the way for very interesting developments in international economic relations.
20. The completion of the draft Convention on Contracts for the International Sale of Goods was not only important but also of great technical value. It was an opportune follow-up to the Hamburg Conference, which had adopted the United Nations Convention on the Carriage of Goods by Sea, 1978, on the basis of the draft prepared by UNCITRAL.
21. His delegation was particularly pleased that, in accordance with the wishes expressed by the majority of the States Members of the United Nations, including Italy, the text on the international sale of goods had taken the form of an international convention and not merely a set of uniform rules. The integration of the rules governing the formation of contracts and those governing the international sale of goods in a single text was also commendable. The question whether the conference of plenipotentiaries would decide to prepare a single instrument or two separate ones seemed a relatively secondary point. The important thing was that the preparatory work had been done simultaneously, so that the two texts were strictly co-ordinated and the conference of plenipotentiaries could consider them together. His delegation noted with satisfaction the important contribution made by UNIDROIT to the preparation of the draft Convention. The competent Italian authorities would examine the text thoroughly, particularly from the viewpoint of co-ordination with the rules on conflict of laws in force in the various countries and other relevant international conventions.
22. The new draft Convention was a remarkable advance over the two Hague Conventions of 1964 relating to the international sale of goods, to which Italy was a party, in particular, because the new draft resolved and eliminated many contradictions which currently existed between those Conventions and the 1955 Hague Convention on the Law Applicable to International Sales of Goods.
23. Since UNCITRAL had not drafted the final clauses of the future convention, leaving that task to the conference of plenipotentiaries, he stressed the importance of making a thorough study of those clauses, in order to avoid a system of reservations or the possible division into parts of the convention giving rise to potentially dangerous situations of legal uncertainty.

(Mr. Serafini, Italy)

24. His delegation was in favour of convening a conference of plenipotentiaries to finalize the text prepared by UNCITRAL, but wished to keep an open mind regarding the date of the conference, stressing the need to give national authorities enough time to assess all aspects of the possible repercussions of the future convention.

25. Italy approved in general of the topics included in UNCITRAL's programme of work. In the selection of priorities, attention should be paid to the following points: correspondence with the current needs of international trade law, particularly with regard to trade relations between developed and developing countries and between countries having different economic and political systems; the technical possibility of achieving results within a reasonable time; and the need to avoid duplication with work being carried out within the United Nations or other competent international organizations. While reserving the right to adopt a more definite position once the new programme of work had been carefully studied by his national authorities, he stressed the particular interest of certain topics which were currently at the hub of the debate on international trade relations, in particular, hardship clauses and clauses protecting parties against currency fluctuations and the problem of the determination of a universal unit of account.

26. Italy was fully aware of the implications for UNCITRAL's work of the difficult quest for a new international economic order, but since that quest was currently under consideration by so many institutions, both inside and outside the United Nations, it recommended a prudent approach. His delegation therefore fully approved of UNCITRAL's decision to establish a Working Group on the New International Economic Order and hoped that the Working Group would be able to undertake a preliminary study, in full knowledge of the facts and in a practical manner, on the basis of the report which the Secretariat, with its customary technical competence and political independence, was to submit to it. It would be premature to go directly to the heart of the matter without very careful in-depth preliminary studies.

27. His delegation did not wish to take a position for or against the transfer of UNCITRAL's secretariat to Vienna, but would merely point out that, since a decision in favour of the transfer had been adopted by the General Assembly in resolution 31/194, it seemed inappropriate at the current stage to reopen the debate on the question. It was for the Secretary-General to ascertain whether such a decision was really feasible within reasonable time-limits and to take into consideration the concern expressed in UNCITRAL regarding the need to have the necessary equipment, in particular, an adequate library and documentation services, before the transfer was effected. It was for the Secretary-General also to bring the matter to the attention of the General Assembly if the transfer presented insurmountable difficulties.

28. Mr. OSAKWE (Nigeria) commended the scholarly work done by the Commission at its eleventh session. With regard to the draft Convention on Contracts for the International Sale of Goods, his delegation welcomed the wise decision to have a single draft Convention but still maintain flexibility by allowing Member States to ratify the whole or any part thereof as appropriate. It further endorsed the recommendation of UNCITRAL that the General Assembly should as soon as practicable convene a conference of plenipotentiaries which would, inter alia, prepare a protocol to the Convention on the limitation period in the international sale of goods, with a view to harmonizing the provisions in respect of sphere of application with those of the draft Convention.
29. With regard to the proposed transfer of the International Trade Law Branch to Vienna, his delegation shared the concern expressed by members of UNCITRAL that the General Assembly should be urged to reconsider its earlier decision, taking into consideration the fact that adequate library facilities and other appropriate legal research materials were a prerequisite for the continued useful work of the Commission. Such a call for a review of the General Assembly's earlier decision in no way derogated from the authority of the General Assembly. He urged that serious consideration be given to the issue, without dwelling too much on the sentiments involved.
30. His delegation noted with regret the inability of the Secretary-General to hold regular international trade symposia because of lack of funds and therefore supported the views of earlier speakers that funds for that purpose should be a charge on the regular budget of the United Nations, so as to ensure certainty, rather than relying on an indeterminate source as was currently the case.
31. All the items included in the future programme of work of the Commission were important to all countries interested in international trade. However, one item stood out clearly from the rest and deserved very urgent consideration, not only from the viewpoint of developing countries but also from that of the industrialized nations, namely, the legal implications of the new international economic order. The importance of the new international economic order was shown clearly in the preamble of General Assembly resolution 3281 (XXIX), dealing with the Charter of Economic Rights and Duties of States. That Charter sought to promote the establishment of the new international economic order based on equity, sovereign equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems. In order to render that Charter operative and to forestall any attempt at coercion aimed at perpetuating economic colonialism by the transnational corporations of the developed countries, an international régime that would spell out the rights and duties of States vis-à-vis the transnational corporations must be carefully worked out. Any attempt to undermine the need for a thorough examination of the legal implications of the new international economic order represented an effort to disregard Chapter II of the Charter of Economic Rights and Duties of States, thus paving the way for flagrant violation without any means of redress for the poor States. Since all still looked to the United Nations as the organ through which peace and security for all mankind could be achieved, genuine efforts should be made by all to ensure the even distribution of natural resources and reasonable access

(Mr. Osakwe, Nigeria)

to markets in developed countries through the progressive removal of all forms of tariff and non-tariff barriers and of restrictive trade practices.

32. Some doubts and reservations had been expressed as to the wisdom of including the legal implications of the new international economic order in the future programme of work of the Commission. At the time of the adoption of General Assembly resolutions 3201 (S-VI) and 3202 (S-VI), strong reservations had been expressed by some developed countries, whose main objection had been that those resolutions did not include a concomitant duty to pay adequate compensation for transnational corporations nationalized by States in whose territory those corporations were operating. The countries concerned should therefore lend their full support to a careful study by the Commission of the legal implications of the new international economic order, since that would involve an examination of all the problems involved.

33. A co-operative economic venture, supported equally by both developed and developing countries because of the general belief in the concept of interdependence, could save the international community from galloping inflation and economic strangulation. His delegation therefore felt that the Committee should support the Commission's proposed programme of work and that high priority should be placed on the need for a thorough examination of the legal implications of the new international economic order.

34. Mr. BARAYAGNIZA (Rwanda) said the results achieved by UNCITRAL at its eleventh session were important. The draft Convention on Contracts for the International Sale of Goods adopted by the Commission was wholly acceptable to his delegation. Nevertheless, in that draft Convention, greater consideration should be given to the fact that a major feature of current international relations was the question of relations between the rich and poor countries. In the past, those relations had been based on an imbalance in favour of the rich countries, which caused them to be challenged by the poor countries. International trade was also characterized by exchanges of goods between developing and developed countries. Furthermore, the rights of developing countries which were not well-versed in commercial practices must be protected in dealings with the rich countries and their profit-hungry transnational corporations.

35. His delegation, therefore, had a number of reservations with regard to the existence of usage or practice in trade relations between developed and developing countries at a time when those relations were still being established and when normal usage and practice were being questioned by the poor countries. His delegation would have more detailed observations to make on that question at the appropriate time.

36. With regard to the future work of UNCITRAL, his delegation welcomed the fact that issues relating to the establishment of a new international economic order had been included in the agenda.

37. With regard to training and assistance in the field of international trade law, his delegation hoped that the second symposium, which had been cancelled

(Mr. Barayagniza, Rwanda)

because of a lack of funds, would finally take place. His delegation believed that provision should be made for financing the Commission's symposia from the regular budget of the United Nations, regardless of whether the budgetary appropriation was supplemented by voluntary contributions. He extended his thanks to the Federal Republic of Germany, which had expressed its willingness to make a voluntary contribution towards organizing the second symposium. He also welcomed the gesture of the Belgian Government, which had agreed once again to provide for the training of two candidates from developing countries.

38. His delegation was not convinced of the soundness or viability of the proposal to transfer the UNCITRAL secretariat. All aspects of the question should be studied before any final decision was taken. Nevertheless, his delegation wished to thank the Government of Austria for its offer to provide the UNCITRAL secretariat with facilities in Vienna. He hoped that the talks currently being held on that question would reach a conclusion which was in the interests of the United Nations.

39. Miss OLIVEROS (Argentina) expressed regret at the sudden death of the Brazilian representative on UNCITRAL, Mr. Gueiros.

40. Turning to the report of UNCITRAL, she said that the draft Convention on Contracts for the International Sale of Goods, adopted by UNCITRAL at its eleventh session, represented one of the Commission's most constructive achievements. The exchange of goods between peoples was essential to progress. The Commission's decision to combine the draft Convention on the Formation of Contracts and the draft Convention on the International Sale of Goods could be considered as a major step in that direction. Regulation, in a form acceptable to the different legal and economic systems, would greatly facilitate international trade. The General Assembly must now determine the date for the conference of plenipotentiaries which was to consider the integrated text. The conference must be held at an appropriate time and venue in order to guarantee its success. Her delegation would prefer it to be held not later than 1980, although care should be taken to avoid overlapping. Moreover, the conference should be of approximately five weeks' duration, with the possibility of an extension if necessary. With regard to the venue, in order to reduce expenditures it might be advisable to hold the conference at Headquarters in New York, where the necessary facilities were available.

41. A number of significant changes had taken place in the field of international economic relations. Those changes would necessitate progressive legal reforms. Consequently, her delegation welcomed the idea of beginning studies to identify the legal implications of the new international economic order. Generally, legal advances lagged behind economic and social development. On the current occasion, it would be worth while endeavouring to keep pace with that development. The work of the Committee in that regard should be co-ordinated with the work of the committee of the whole established by General Assembly resolution 32/174.

42. As UNCITRAL was a strictly legal body, very careful consideration should be given to the legal content of each question in the selection of new items and the allocation of priorities. Nor should it be forgotten that the work of UNCITRAL must

(Miss Oliveros, Argentina)

be co-ordinated with that of other organizations also concerned with the study of questions relating to international trade law. Such co-ordination would avoid duplication of effort and its concomitant problems.

43. Her delegation attached the greatest importance to the Commission's programme of training and assistance in the field of international trade law. That type of technical training should benefit principally the developing countries. In carrying out that programme successfully, the Commission would be fulfilling its mandate. It was regrettable, therefore, that it had not been possible to hold the second symposium. It should be held as soon as it became possible to do so. Referring to the report of the Secretary-General contained in document A/33/177 and, in particular, to the two alternatives proposed in part IV, she said that her delegation believed that such symposia should be financed from the regular budget of the United Nations.

44. With regard to the possible transfer of UNCITRAL's secretariat from New York to Vienna, her delegation did not wish to take sides, but simply recommended that, in order to maintain the current standard of work, the transfer should be carried out as soon as the necessary library facilities were ready for use. The length of time that that would take would depend on the expenditures entailed, the commitment with which the work was carried out and, above all, on the goodwill of the parties concerned. She expressed the hope that the exemplary work of UNCITRAL would not be impaired.

45. Mr. CHOUAKI (Algeria) said the report of UNCITRAL demonstrated the ability of that body to formulate uniform rules acceptable to different legal systems. The United Nations Convention on the Carriage of Goods by Sea, adopted at Hamburg in 1978, was a prime example of that ability.

46. The draft Convention on Contracts for the International Sale of Goods was the result of the amalgamation of two draft texts which had been adopted separately. That approach was fully satisfactory to his delegation. The amalgamation gave every indication of producing a complete, flexible and practical legal instrument. Moreover, the benefits offered by that text would necessarily encourage States to ratify both the rules on the formation of contracts and those relating to the international sale of goods. Without wishing to anticipate the work of the conference of plenipotentiaries, attention should be drawn to the superficial and unsatisfactory nature of the definition of certain concepts such as good faith, practice and usage in international trade; those concepts represented important aspects of the formation of contracts, and their implications for the international sale of goods called for careful consideration in order to arrive at a precise definition of them. His delegation hoped that account would be taken of the experience gained in adopting other international legal instruments in order to determine the duration of the conference of plenipotentiaries that was to consider the integrated text.

47. The question of international payments, because of its complexity and technical nature, was to some extent outside the competence of the Sixth Committee.

(Mr. Chouaki, Algeria)

Accordingly, while congratulating the Working Group on International Negotiable Instruments on its work and subscribing fully to the decision of UNCITRAL, his delegation stressed the importance, in that field more than in any other, of sanctioning the work of codification by the adoption of practical uniform rules which could be applied by the large majority.

48. The Commission's new programme of work was ambitious. One of the items, concerning the legal implications of the new international economic order, was a matter of capital importance and urgency to developing countries struggling for the elimination of discrimination and protectionism in international trade. The Commission was confronted on the one hand, by the economic imbalance benefiting the rich countries, and on the other by the demands of the poor countries for equity and justice. The Sixth Committee would be failing in its duty if, in its codification work, it ignored existing international conditions and concentrated its efforts solely on matters of doctrine and pure legal technicalities.

49. His delegation supported UNCITRAL's decision to establish a working group to make recommendations as to specific topics which could appropriately form part of the programme of work of the Commission.

50. The Commission's symposia on international trade law represented an important contribution to legal training in general, while at the same time helping candidates from developing countries to acquire specialized knowledge in the field of international trade law. The Secretary-General's report contained in document A/33/177 concluded that the holding of such symposia was dependent on a reliable means of funding which, in the final analysis, meant funding from the United Nations regular budget. His delegation firmly supported that position.

51. His delegation supported the implementation of the proposal concerning the transfer of the International Trade Law Branch to Vienna in 1979 and felt that the decision as to an appropriate date for the transfer should be left to the Secretary-General.

The meeting rose at 12.35 p.m.