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Chairman: Mr. TÜRK (Austria)

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AGENDA ITEM 143: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SECOND SESSION

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The meeting was called to order at 10.15 a.m.

AGENDA ITEM 143: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SECOND SESSION (A/44/17, A/44/453 and Add.1, A/44/409)

1. Mr. RUZICKA (Chairman of the United Nations Commission on International Trade Law), introducing the report of the Commission on the work of its twenty-second session (A/44/17), said that UNCITRAL had devoted a major part of its twenty-second session to a review of the draft Convention on the Liability of Operatrrs of Transport Terminals in International Trade. The draft Convention had had its origins in work begun in 1960 by the International Institute for the Unification of Private Law (UNIDROIT) on the warehousing of goods during transport. In 1983, UNIDROIT had approved a preliminary draft convention on the liability of operators of transport terminals, and had suggested that the project should be taken up and completed by UNCITRAL, which had agreed to do so. The draft had been discussed and revised at four sessions of the Working Group on International Contract Practices. In response to developments in terminal practice and technology, the Working Group had decided to focus on the role of terminals as an integral part of the transport chain, rather than on the warehousing of goods during transshipment as in the original text. After completing revision of the draft Convention, the Working Group had sent it to all Governments and interested international organizations for comment. Finally, at its twenty-second session, the Commission had revised the text,, taking into account both the comments received and the draft final clauses prepared by the secretariat. The decision taken by the Commission had been incorporated into the text of the draft Convention by a drafting group, and, after considering‘the text as amended, the Commission had decided to adopt the draft Convention and to submit it to the General Assembly for its decision as to the procedure to be followed for adoption.

2. International transport conventions had achieved a significant degree of harmonisation and unification of the law governing the international transport of goods. However, they did not address the question of liability of terminal operators for loss of or damage to goods in international transport, even though statistics showed that the largest losses occurred while the cargo was in terminals. That vital area of international transport law had hitherto been left to national laws or contractual arrangements between the parties, and the resulting lack of uniformity had caused serious legal problems. The draft Convention was an essential element in bringing about the uniformity of the law in that area. As it was not linked to any particular mode of transport, the draft Convention was compatible with all conventions on the international transport of goods.

3. The Commission had decided to adopt the uniform rules in the form of an international convention rather than as a model law in order to ensure uniformity in the text as adopted at the national level and in its application by the courts. In addition, since most liability regimes governing the carriage of goods were in the form of conventions, a convention was the most appropriate way to fill the gaps left by those instruments. As far as the procedure for adopting the draft as a convention was concerned, the General Assembly's adoption in 1988 of the United

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Nations Convention on International Bills of Exchange and International Promissory Notes had led some representatives to suggest that a similar procedure might be followed for the draft Convention. However, the Commission as a whole had not shared that view, and had expressed its strong preference for adoption by a diplomatic conference. It had been pointed out that the draft Convention on International Bills of Exchange and International Promissory Notes had been considered by a working group at 14 sessions and by the full Commission at three sessions. When it had been submitted to the General Assembly in 1987, the remaining questions had been essentially of a policy nature and had been easily handled by a working group created by the Sixth Committee. However, in the case of the draft Convention at hand, certain issues had not been finally settled. Therefore, the best approach was to convene a diplomatic conference to which States might send representatives qualified in the issues involved. Moreover, the relevant commercial and economic interests would also be able to participate through their non-governmental organizations. Given the eminently practical nature of the draft Convention, it was important to obtain the widest possible support.

4. In anticipation of the agreement of the General Assembly to its recommendation, the Commission had asked the secretariat to plan for a three-week conference in early 1991. The appropriate facilities had been tentatively reserved in Vienna for 8 to 26 April 1991, which appeared to be an ideal time for the conference.

5. At its 1988 session, the Commission had noted the recommendation of the Working Group on International Payments that the model rules on electronic fund transfers under preparation should deal with legal problems encountered in international transfers only, and that at a later date consideration might be given to adapting the rules to domestic transfers. At its 1989 session, the Commission had received reports from the Working Group on its two inter-sessional meetings (A/CN.9/317 and 318), and had noted the decision of the Working Group to change the title of the draft provisions to "draft Model Law on International Credit Transfers". The Model Law was designed to apply to all international credit transfers, electronic or otherwise. UNCITRAL had asked the Working Group to continue its work with a view to presenting a text for consideration at the Commission's twenty-fourth session, in 1991.

6. At.the twen.y-first session, in 1988, UNCITRAL had also considered the report of the Secretary-General on stand-by letters of credit and guarantees (A/CN.9/301). It had noted the legal problems relating to the two kinds of instruments that had arisen in the various legal and economic systems. It had agreed with the conclusion that a greater degree of certainty and uniformity was desirable, and had approved the suggestion to divide work into two phases, the first bearing on contractual rules or model terms, and the second on legislative texts. With respect to contractual rules or model terms, at the 1988 session UNCITRAL had welcomed the work undertaken by the International Chamber of Commerce (ICC) in preparing draft Uniform Rules for Guarantees. It had agreed that comments and recommendations by the States members of UNCITRAL could help achieve world-wide acceptability of the ICC Rules, thereby minimising or eliminating some of the

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current legal difficulties, UNCITRAL had requested the Working Qroup on International Contract Practices to review the ICC draft Uniform Rules for Guarantee6 with a view to formulating comments and possible suggestions that ICC might take into account in finalising the draft Rules.

7. At the 1989 session, the Observer for ICC had stated that ICC had examined tho observations and recommendations of the Working Group contained in the report of its meeting in November 1988, and hoped that a final text would be adopted by the end of 1989 with a target date for its coming into force of 1 January 1990.

8. At its twenty-first session, in 1988, UNCITRAL had also requested the Working Qroup to examine the desirability and feasibility of preparing a uniform law on stand-by letters of credit and guarantees, Having reviewed the ICC draft rules, the Working Group had come to the conclusion that, by virtue of the contractual nature of those draft Rules, important gaps would be left that could be closed only at the statutory level. After an exchange of views on topics that could be dealt with at that level, the Working Group had recommended to the Commission that work on the preparation of a uniform law should begin. The Commission had accepted the recommendation and assigned the task of preparing the uniform law to the Working Group on International Contract Practices, which it would do at its meeting in January 1990.

9. The Commission had also had before it a report from the Working Group on the New International Economic Order on the topic of procurement. The Working Group had commenced work on the preparation of a model procurement law by examining the major legal issues arising in connection with the procurement of works and goods. The model law would be intended to assist countries in improving their procurement laws and procedures, or in establishing such laws if they did not yet exist. The secretariat had been requested to prepare a first draft of the model law and a commentary for the 1990 meeting of the Working Group. The Commission had noted that work on government procurement was already in progress within GATT, and that there had been an exchange of views and information on that topic between the Working Group and GATT. It had been assured that there would be no duplication of work, as the scope and objectives of the two projects were different. It had thanked the Working Group and requested it to continue its work.

10. The main item on the agenda of the twenty-third session would be the question of international countertrade. At its twenty-first session, the Commission had received a study from the secretariat on the legal issues raised by such operations (A/CN.9/302), and it had decided that it would be desirable to prepare a legal guide on drawing up international countertrade contracts. It had requested the secretariat to prepare a draft outline to enable it to determine what subsequent action should be taken. At its twenty-second session, it had decided, on the basis of that outline, that such a guide should be prepared, and had requested the secretariat to prepare draft chapters for preliminary consideration at the 1990 session. The Commission was of the view that as a legal body specialized in international trade law and composed of States from all regions at different levels of economic development, it should assist participants in countertrade transactions

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in overcoming the often poorly understood legal problems which they posed. It was of the view that as its membership and orientation were different from those of the Economic Commission for Europe (ECE), its work would not duplicate the barely comparable work undertaken by ECE.

11. At the twenty-second session, UNCITRAL had renewed its request to the secretariat to undertake a study of the legal issues arising in the formation of international commercial contracts by electronic means. That study, which would be submitted at the twenty-third session, formed part of a commitment given by the Commission in 1984 to consider the legal problems arising out of automatic data processing as an item of high priority.

12. The unusually high percentage of reports received by the Commission in 1989 from working groups and from the secretariat related to projects still at an early stage of preparation could be attributed to the hiring freeze that had been in effect between March 1986 and the end of 1988. As a result, a number of vacancies had remained unfilled in the International Trade Law Branch, which had been forced to devote the bulk of its resources to the completion of work on the United Nations Convention on International Bills of Exchange and International Promissory Notes, the UNCITRAL Legal Guide on Drawing up International Contracts for the Construction of Industrial Works and the draft Convention on the Liability of Operators of Transport Terminals in International Trade. It had not been possible, therefore, for the secretariat to prepare all of the background documentation the Commission needed to undertake new topics, and only two Working Groups had been scheduled to meet in 1989, instead of the usual four to six, The vacant positions were, however, being filled, the necessary documentation was being prepared, and in 1990 there would be a full quota of Working Group meetings.

13. UNCITRAL had also before it a report on the current activities of international organizations related to the harmonisation and unification of international trade law (A/CN.9/324) and had heard the representatives of various international organisation& report on their current projects and future programmes of work. It realized that one of its major roles was to co-ordinate the work of those organisations and that the best way to do so was often to give them an opportunity to exchange information.

14. In respect of the status of the conventions for which the Commission was responsible, UNCITRAL had been informed that the Convention on the Limitation Period in the International Sale of Goods did not exist in Arabic since that language had not been one of the five working languages of the diplomatic conference held in 1974, whereas the 1980 Protocol amending the Convention did exist in Arabic. It had therefore requested the secretariat to prepare a translation into Arabic of the Convention as amended by the Protocol so that it. might review it at its twenty-third session. The Arabic language version of the Convention might, then be proposed by the Secretary-General to all States by depositary notification, so that if no objection to either the procedure or the proposed text was made, the Secretary-General might publish the text as the official Arabic language version by the end of 1990.

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15. Since the preceding report (A/43/17), the international community had given increased support to the legal instruments prepared by UNCITRAL. Four more States - Australia, Denmark, the German Democratic Republic and Norway - had ratified or acceded to the United Nations Convention on Contracts for the International Sale of Goods, bringing the number of States bound by that Convention to 19. The German Democratic Republic had also ratified the Convention on the Limitation Period in the International Sale of Goods and the 1980 Protocol amending that Convention, so that both conventions would come into force for it in March 1990. Eight additional States - Algeria, Antigua and Barbuda, Argentina, Bahrain, Dominica, Kenya, Lesotho and Peru - had ratified or acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, bringing the number of States parties to 83, and there was every reason to believe that the high rate of accession would continue for some time into the future. Another seven jurisdictions - Australia, Bulgaria, Nigeria, the Canadian provinces of Ontario and Saskatchewan and the states of California and Texas - had enacted legislation based on the UNCITRAL Model Law on International Commercial Arbitration, Lastly, as of the close of the session, 14 States had ratified or acceded to the United Nations Convention on the Carriage of Goods by Sea (the Hamburg Rules), Nigeria and Sierra Leone having joined between the twenty-first and twenty-second sessions, Since the close of the twenty-second session, Kenya and Burkina Faso had also acceded to the Convention, bringing the total to 16. Only four additional accessions or ratifications were necessary for the Convention to come into force, and, according to the information communicated to UNCITRAL, it was certain that those four would be deposited in the near future, That took on more than the usual importance since a number of other Governments had announced publicly that they would seriously consider ratifying or acceding to the Convention once it had come into force,

16. In resolution 42/152 the General Assembly had invited all States which had not yet done so to consider ratifying or acceding to the three conventions prepared by UNCITRAL by that date and had requested the Secretary-General to make increased efforts to promote the adoption and use of the texts emanating from the work of UNCITRAL and to submit to the General Assembly at its forty-fourth session a report concerning the status of those conventions, That report had been issued as document A/44/453 and Add 1. In order to obtain the views of States that were not as yet parties to the conventions, the Secretary-General had sent them a note verbale in early 1988 and a reminder in early 1989, The replies were summarised in the report. Although the total number of replies had been fairly small, two features stood out. The first was the strong support for the United Nations Convention on Contracts for the International Sale of Goods, whose widespread acceptance within a few years was virtually assured. The second was that. a very significant number of States had indicated that they expected to give serious consideration to acceding to or ratifying the Hamburg Rules, but. only when they had come into force. That made it even more important for the States that were favourably disposed towards the Convention to become parties to it as soon as possible. The request to the Secretary-General had been followed up largely in the context. of UNCITRAL's programme of training and assistance.

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(Mr. Ruzicka)

17. UNCITRAL had received a report on the regional seminar on international trade law, organized by the secretariat in Lesotho in co-operation with the Government of that country and the Preferential Trade Area of Eastern and Southern African States (PTA) and attended by high-level officials, representatives of chambers of commerce and of industry, and by academics. The results of the seminar had subsequently been discussed at a meeting of the PTA Committee of Legal Experts, which had concluded that the States members of PTA should be urged to consider and adopt the UNCITRAL legal texts, At its meeting in November 1988, the PTA Council of Ministers had taken note of the seminar's report, In particular, it had noted that the participants in the seminar would recommend to their respective Governments the adoption of the various UNCITRAL legal texts. UNCITRAL had requested the secretariat to remain in contact with the PTA secretariat and with the participants in the seminar in order to maintain the momentum generated towards consideration of the adoption of the conventions, UNCITRAL had also expressed its appreciation to Denmark, Finland, the Netherlands, Norway, Sweden and the United States for financing the seminar.

18. The symposium organised on the occasion of the twenty-second session has given rise to very intoresting debates on the work of UNCITRAL. Some 250 applications had been received from 90 countries, and funds had been available to cover the expenses of 32 participants from developing countries. An additional 48 individuals, a number of whom were from developing countries, had also participated, but without financial support. UNCITRAL had expressed its appreciation to Austria, Canada, Denmark, Finland and Sweden for helping to finance the symposium. The secretariat was planning a similar symposium for the twenty-fourth session, in 1991, and hoped to organize symposiums whenever the Commission met in Vienna.

19. A seminar would be held in New Delhi in October 1989, in co-operation with the Asian-African Legal Consultative Committee, for the purpose of promoting the adoption and use of UNCITRAL texts by the Asian members of that Committee, In April 1990 a seminar would be organised in Moscow for participants from developing countries. It would be financed from a trust fund established by the Soviet Union and the United Nations Development Programme. The secretariat had also reported that it was engaged in discussions with a view to holding other seminars in various developing countries in different parts of the world.

20. Lastly, he recalled that in 1988 both UNCITRAL itself and the General Assembly had invited Governments, the relevant United Nations organs, the concerned organizations and institutions, and individuals, to make voluntary contributions to the training and assistance programme on an annual basis, and he thanked tho Governments that had responded to those invitations, In addition to the Governments that had contributed to the financing of the seminars already mentioned, the Government of Finland had made funds available for four years to help finance the training and assistance programme of the secretariat, and the Government of Switzerland had contributed to financing, also for four years, the activities of UNCITRAL, including those designed to promote the adoption and use of the legal instruments based on its work. Those multi-year commitments were of great assistance to the secretariat in planning that important aspect of UNCITRAL's work,

21. Mrs.O (Austria) said that the draft Convention on the Liability of Operators of Transport Terminals in International Trade had made an extremely important contribution to the uniformity of trade law in that area, and very usefully supplemented the various transport conventions, especially the United Nations Convention on the Carriage of Goods by Sea. Her delegation therefore fully supported the decision of UNCITRAL to proceed on the assumption that the rules established by the Working Group on International Contract Practices would be adopted in the form of a convention. A convention would be much more conducive to the achievement of uniformity of law in that area than a mere model law, and it was only logical to adopt another binding legal instrument to fill in the gaps left by the various transport conventions. The convening of an international conference of plenipotentiaries for the adoption of the convention, as recommended by UNCITRAL, was the best way to get it universally accepted, and her delegation hoped that such a confe.ence would take place in Vienna in 1991.

22. Her delegation welcomed the decision of the working group on International Payments to draft a model law on international credit transfers, and the decision by UNCITRAL, following its consideration of the International Chamber of Commerce draft uniform rules for guarantees, to ask the Working Group on International Contract Practices to draft a uniform law on guarantees and standby letters of credit, It had also noted with satisfaction the exchanges of -views and information on procurement between GATT and the Working Group on the New International Economic Order. Such exchanges of views could only facilitate the work of GATT to extend the scope of the GATT Agreement on Government Procurement and efforts by UNCITRAL to draw up a model procurement law, and would help to prevent duplication. Her delegation also welcomed the continuation of preparatory work on a legal guide on drawing up international countertrade contracts.

23. Her delegation had noted with satisfaction the successful symposium on the work of UNCITRAL held during the twenty-second session, and the extensive programme of seminars and symposiums on international trade law which the Secretariat intended to organiae or co-sponsor, in particular for the developing countries,

24. Finally, it was to be hoped that UNCITRAL would be able to continue, despite its financial difficulties, to do its extremely useful work with its customary efficiency and competence.

25. Mr. TREVES (Italy) said that the draft convention on the liability of operators of transport terminals in international trade, based on a preliminary draft by UNIDROIT, had enriched the contribution of UNCITRAL to the field of international transport law and provided a good example of fruitful co-operation between two bodies concerned with international trade law. UNCITRAL had been right to decide to make the draft into a convention rather than a model law, because a convention, by binding States parties, was more conducive to unification of the law. States which did not wish to commit themselves could always use the text of the convention as a model for their own legislation. Besides, most of the other instruments on international transport law drawn up by UNCITRAL and other bodies were conventions. The reasons given by UNCITRAL in paras. 223 and 224 of its report (A/44/17) in favour of convening a conference of plenipotentiaries to adopt

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(Mr. Treves, Italy)

the convention should be given serious consideration even in a period of austerity. It was of the utmost importance that the convention should be adopted in such a manner if it was to be accepted world wide. Any other solution would do a disservice to the unification of international trade law,

26. His delegation was fully eatisifed with the progress made on a variety of other projects. The work on electronic funds transfers seemed to be particularly advanced, and that on the draft model law on procurement confirmed the useful contribution UNCITRAL could make to the legal aspects of the New International Economic Order. His delegation had noted with interest the progress announced on a draft uniform law on guarantees and standby letters of credit and a legal guide on drawing up international procurement contracts, although it shared some of the doubts expressed during the discussion on those two subjects.

27. As regards the status of conventions, his delegation particularly welcomed the progress made by the Vienna Convention on Contracts for the International Sale of Goods, which was now binding on 19 States, It had been disappointed, however, to find in the report no reference to efforts during the 1909 session to promote a uniform interpretation of the Convention by making generally known the legal decisions taken pursuant to the convention in all Contracting States, It would have liked the report to give as much information as possible on the subject.

28. His delegation noted with great satisfaction the progress of recent years in training, assistance and distribution of information on the work of UNCITRAL. The announcement of a new edition of the book on UNCITRAL for 1991 was particularly welcome.

29. Mr. GILL (India) said that the draft convention on the liability of operators of transport terminals in international trade which UNCITRAL had approved was intended to fill the gaps in the current system of international transport low. While current conventions dealt with transport by sea, air and land, there was no generally accepted legal standard governing depots and transport terminals, The purpose of the draft convention was to establish a standard of liability for the operation of transport terminals similar to that under the current conventions, which held carriers liable for damage to goods, and to establish strict financial limits to that liability. It also dealt with the terminal operator's rights to retain and sell goods when payment was not made, and laid down special rules for dangerous goods. Such an attempt to reconcile the interests of the contracting parties deserved note,

30. His delegation was glad that UNCITRAL had considered the possibililty of establishing international legal standards for bank guarantees and standby letters of credit, and had decided that it would be appropriate for it to develop a uniform law on those two topics.

31. His delegation wholeheartedly endorsed the decision by UNCITRAL to produce a legal guide on drawing up countertrade contracts, an area of special relevance to developing countries.

(Mr. Gill, India)

32, It also supported the decision of UNCITRAL to ask the Working Group on International Payments to continue its work in order to present a draft model law on all forms of international credit transfers by 1991.

33. In his delegation's view, the report of the Working Group on the New International Economic Order concerning procurement and the drafting of a model law necessary to assist countries to restructure their domestic legislation on the subject indicated that UNCITRAL was determined to continue its efforts in that area.

34. His delegation welcomed efforts by UNCITRAL to co-ordinate its work with that of other international organisations generally and the Asian-African Legal Consultative Committee in particular, with a view to making the instruments it drafted better known.

35. His delegation reaffirmed its support for the UNCITRAL training and assistance programme, in particular the symposiums on international trade law, which were very useful to upcoming lawyers and government officials from developing countries,

36, Mr. MARTINEZ GONDRA (Argentina) said that the draft convention on the liability of operators of transport terminals in international trade drawn up by UNCITRAL was advanced enough to permit codification of the subject by a conference of plenipotentiaries, thus giving legal and other specialists in the matter an extensive opportunity to work together to resolve some outstanding questions.

37. As regards the model law on procurement which the Working Group on the New International Economic Order had been asked to draw up, his delegation believed the Group would find it useful to have available to it at its forthcoming session the results of efforts by GATT to extend the scope of the GATT Agreement on Government Procurement] it urged the Group to continue its exchanges of views with GATT officials.

36. On the subject of guarantees and standby letters of credit, his delegation was for the elaboration by the Working Group on International Contract Practices of a uniform law, in the form of a model law or convention, to standardise legislation on the subject.

39. International countertradw operations were a form of trade used by many developing countries, notably those which, for sundry reasons, were short of hard currency. They were thus a fact which must not be disregarded, and those countries needed instruments to help facilitate their trade. His delegation therefore looked forward with interest to the drafting, on the basis of the outline considered by UNCITRAL at its twenty-second session, of a legal guide on drawing up international countertrade contracts. It also felt it would be useful for that purpose to have available the results of any work on the subject done in other institutions.

The meeting rose at 11.30 a.m.