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at 10 a.m.  
New York

SUMMARY RECORD OF THE 4th MEETING

Chairman:

Mr. MIKULKA

(Czechoslovakia)

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

**AGENDA ITEM 141: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-THIRD SESSION (continued) (A/45/17)**

1. Mr. NEDELICHEV (Bulgaria) said that the development of stable international trade and economic relations between States on the basis of equality and mutual advantage was becoming an increasingly important factor for the improvement of international co-operation. That was why the building of a substantial legal basis for conducting international trade activities was an important element in strengthening the rule of law in international economic relations. Accordingly, Bulgaria would spare no effort to contribute to the work of the United Nations Commission on International Trade Law (UNCITRAL).
2. His delegation expressed satisfaction at the progress achieved in preparing a draft legal guide on drawing up contracts in international countertrade transactions, which should provide States with a range of contractual solutions to legal problems arising in that type of trade.
3. The draft model law on procurement, which was being elaborated by the Working Group on the New International Economic Order, was a useful instrument for States that wished to develop further their legislation in the field and could, if necessary, incorporate it into their internal law.
4. His delegation was convinced that the Working Group on International Contract Practices would continue to carry out expeditiously its work on the preparation of the uniform law on guarantees and stand-by letters of credit.
5. Having repeatedly underscored the important role of UNCITRAL in the harmonization and unification of international trade law, Bulgaria placed great hope in the conference of plenipotentiaries to be held at Vienna in 1991 for the adoption of the draft convention on the liability of operators of transport terminals in international trade.
6. Lastly, his delegation reaffirmed its readiness to co-operate actively with the Commission in carrying out its programme of work.
7. Mr. DASTIS (Spain) said that his country had always sought to co-operate to the best of its ability with the Commission by participating in its discussions and, as was currently the case, by presiding over one of its working groups. Spain was aware of the importance of the unification and harmonization of international trade law in a world in which the economy was increasingly becoming an instrument of co-operation between interdependent countries but could also, because of that, be a source of conflict and disagreement.
8. Among the Commission's achievements and current activities he drew attention to two areas of work which he considered particularly productive. The first, which consisted in improving instruments of co-operation in trade between countries with

(Mr. Dastis, Spain)

different levels of development included the draft legal guide on drawing up contracts in international countertrade transactions and the draft Model Law on International Credit Transfers. The practical manner in which UNCITRAL had dealt with those two questions, avoiding any duplication of effort, confirmed his delegation's view that the Commission provided a completely suitable framework for considering problems linked to a new international economic order. It was less a question of codifying major abstract principles than trying to resolve difficulties which arose in the everyday practice of international trade. The work on electronic fund transfers was part of the second area of activity, which his delegation hoped would be speedily expanded to include the drawing up of international contracts by electronic means. That question could be considered by the Working Group on International Contract Practices. In any event, electronic fund transfers demonstrated the difficulties connected with the use of electronic means in trade as well as the inadequacy of traditional solutions.

9. Spain had recently deposited its instruments of accession to the United Nations Convention on Contracts for the International Sale of Goods and should soon do the same with regard to the United Nations Convention on International Bills of Exchange and International Promissory Notes.

10. With respect to the United Nations Decade of International Law, Spain believed that the objectives set for international trade law were in keeping with those laid down for the Decade in general. The widespread application of existing texts was more useful than the elaboration of new texts in areas where a sufficient consensus did not yet exist. Accordingly, Spain hoped that the Commission would redouble its efforts in the field of training and promoting the spread of international trade law.

11. Lastly, his delegation expressed satisfaction at the efforts by the Secretariat to make it possible to publish the Yearbook of UNCITRAL in the near future.

12. Mr. BELLO-FADILE (Nigeria) said that his country fully recognized the importance of the mandate of UNCITRAL, which had the task of co-ordinating legal activities in order to avoid duplication of effort and promote efficiency and coherence in the progressive development and harmonization of international trade law. To date, the Commission had carried out those functions in a commendable manner, as demonstrated by the various multilateral conventions that it had drawn up as well as the numerous seminars and symposia that it had organized.

13. The draft convention on the liability of operators of transport terminals in international trade filled a major gap because existing rules did not cover loss while goods were in terminals. Accordingly, his delegation reaffirmed its support for the conference of plenipotentiaries, which was to adopt the convention in Vienna in 1991.

14. Nigeria placed great hopes in the draft legal guide on drawing up contracts in international countertrade transactions. It was the urgent task of both debtor and

(Mr. Bello-Fadile, Nigeria)

creditor countries to tackle the problems of debt and the negative transfer of resources from the developing to the developed countries.

15. Recent developments in Eastern Europe and the progress made towards the unification of Western Europe should pave the way for a liberalisation of trade which would be advantageous for both the developed and the developing countries. Likewise, as experience had confirmed, any negative impulse in the international economy, in particular with respect to terms of trade, would have dire consequences for all, including the creditor countries. It was therefore necessary to leave no stone unturned in the drafting of the rules which should regulate international economic transactions. For its part, Nigeria was ready to contribute to those efforts.

16. Ms. LI Yanjuan (China) said that, since countertrade was a means for the developing countries to alleviate their current difficulties - such as their lack of hard currency - in international trade, where they were not very competitive, a practical legal guide based on the experiences of various countries should be prepared to assist countries which engaged in that type of trade, in particular developing countries.

17. With respect to the draft legal guide on drawing up contracts in international countertrade transactions, China believed that, in carrying out countertrade, the parties should be firmly committed to conclude a countertrade contract instead of relying on a declaration of intent, and each side should provide the other with mutual guarantees. Moreover, the equality of rights and obligations of the two parties should be stipulated in order to avoid situations in which the interests of one party were damaged as a result of the refusal by the other party to honour its counter-purchase obligations. As for methods of payment, it was important, in order to ensure that both contracts were carried out, to avoid as far as possible separate payments and to adopt "linked payment" mechanisms. The legal guide should contain an in-depth analysis of possible financial costs which might ensue from the adoption of linked payment mechanisms, in order to enable the parties concerned to choose the most appropriate method of payment for their operations. The number of model provisions in countertrade contracts should be increased in order to guide those who engaged in that type of trade.

18. In short, her delegation believed that the formulation of a legal guide was absolutely necessary to assist States in their countertrade transactions and, especially, to help parties to trade agreements to spell out, during the negotiations, what their counter-purchase obligations were. Such a guide would help promote the development of countertrade, and her delegation looked forward to its early completion.

19. With regard to training and assistance, China believed, judging by what had already been accomplished, that more attention should be given to the interests of, and training opportunities for, developing countries.

(Ms. Li Yanduan, China)

20. With respect to the co-ordination of the activities of UNCITRAL and the United Nations Decade of International Law, her delegation was of the view that international trade law was an important branch of international law, and UNCITRAL should make its contribution to the Decade. She therefore proposed that the Secretariat should draw up a detailed plan relating to the legislation, training and publicity work for all States to refer to.

21. China was currently carrying out a radical programme of economic reforms and modernisation which was aimed at opening China to the outside world and promoting and expanding its economic and trade relations with other countries. China was also considering acceding to relevant international conventions, and it was carrying out its trade activities with other countries in accordance with international practice. In that regard, her delegation had always attached great importance to the work of UNCITRAL, in which it placed high hopes.

22. Mr. VERENIKIM (Union of Soviet Socialist Republics) said that the principal result of UNCITRAL's work at its twenty-third session had been its initiation of work on the drafting of a legal guide on drawing up contracts in international countertrade transactions, which was intended to be a universally applicable document for assisting countertrade partners in resolving legal problems connected with the conclusion of the contracts. The difficulties in that area were particularly great for States which might wish to establish trade ties with countries which, lacking foreign currency, were obliged, more often than other countries, to engage in countertrade. His delegation welcomed the progress made by UNCITRAL in its drafting of the first chapters of the legal guide and hoped that the Commission would be able to consider the final text at its twenty-fifth session, in 1992.

23. His delegation was also pleased with the discussion on the contribution of UNCITRAL to the United Nations Decade for International Law, which had taken place at UNCITRAL's twenty-third session. UNCITRAL could make a contribution by drawing up new legal texts to promote the development of international trade law and encourage wider accession to existing instruments. It could also make a useful contribution to the development of trade ties between States and to the establishment of a new and just international economic order founded on values common to mankind and to all legal systems.

24. Mr. HANAFI (Egypt), said that, as usual, UNCITRAL had achieved admirable progress in carrying out its task, as evidenced by its report on the work of its twenty-third session.

25. Concerning the question of international countertrade, his delegation was pleased to note that there was general agreement with the overall approach taken by the Secretariat in the draft chapters, both as to the structure of the legal guide and as to the nature of the description and advice contained therein.

26. Concerning international payments, his delegation hoped that the Working Group on International Payments would be able to resolve the outstanding issues and present a draft text to UNCITRAL at its twenty-fourth session in 1991.

(Mr. Hanafi, Egypt)

27. His delegation welcomed the progress already achieved in elaborating the model law on procurement and hoped that the draft would be completed at the earliest possible date.

28. With respect to the increase in the membership of the working groups, his delegation wished to reiterate the desirability of inviting all States to participate in the work of the working groups and of UNCITRAL, as members or observers. That would attest to UNCITRAL's interest in having Member States participate in all phases of its work, particularly at the preliminary stage. That policy, which had been pursued thus far, was responsible for the effectiveness of the Commission's work, as clearly shown by its report on the work of its twenty-third session.

29. Mr. MOLNAR (Hungary) said that his delegation favoured the preparation of a legal guide on elaborating international countertrade contracts. It supported the overall approach taken in that regard by the UNCITRAL secretariat in the draft chapters and hoped that the final text would be submitted to the Commission at its twenty-fifth session.

30. Since electronic data interchange was more and more widespread in world markets, his delegation welcomed the efforts of the UNCITRAL secretariat to fill the legal vacuum existing in the field and reduce the uncertainties and difficulties encountered in practice by examining the legal questions related to the formation of international contracts by electronic means. It hoped that that examination would lead to the elaboration of legal rules in the area.

31. It was his delegation's understanding that the model law on international credit transfers would be the main subject of discussion at the Commission's 1991 session. He trusted that the Working Group on International Payments would be able to resolve the outstanding problems by that time so that the text of the model law could be submitted to UNCITRAL.

32. His delegation was satisfied with the positive results obtained by UNCITRAL in the area of training and assistance. It supported the efforts by the Commission's secretariat to carry out an extensive programme of activities aimed at making the achievements of the Commission more widely known.

33. Concerning the status of conventions, his delegation noted with satisfaction that, since 1989, the number of States parties to instruments elaborated by UNCITRAL had increased significantly. It reiterated its invitation to those States which had not yet done so to ratify or accede to the instruments in question.

34. In conclusion, his delegation was fully satisfied with the progress achieved by UNCITRAL in various other areas and hoped that the United Nations Decade of International Law would provide an opportunity for UNCITRAL to strengthen its programme of work in order to achieve its goals. His country was prepared, as a member of UNCITRAL, to participate in the efforts made within the framework of the United Nations to harmonize and unify the principles and norms of international trade law.

35. Mr. GILL (India) noted that UNCITRAL had contributed, through its excellent work, to the progressive harmonization and unification of international trade law, as evidenced by the various conventions it had elaborated, including the 1974 Convention on the Limitation Period in the International Sale of Goods, the 1978 United Nations Convention on the Carriage of Goods by Sea, the 1980 Convention on Contracts for the International Sale of Goods, the 1985 Model Law on International Commercial Arbitration and the 1988 United Nations Convention on International Bills of Exchange and International Promissory Notes. His delegation also noted that the Commission had approved the draft convention on the liability of operators of transport terminals in international trade and recommended that the General Assembly should convene an international conference of plenipotentiaries at Vienna for its adoption. That Convention was designed to fill the gaps in current international transport law by establishing the financial liability of transport terminal operators, including their liability for loss caused by dangerous goods, and by attempting to achieve a balance of interests between the contracting parties.

36. His delegation was pleased to hear that during UNCITRAL's twenty-third session it had examined the first seven chapters of the draft legal guide on drawing up contracts in international countertrade, prepared by its secretariat. Countertrade was very important to developing countries in view of their meagre and dwindling foreign exchange reserves. The guide was not intended to be a normative code, but should provide an analysis of legal problems related to international countertrade contracts, propose solutions and indicate the implications of the various solutions.

37. His delegation also appreciated the fact that the Commission had considered and approved the reports of the nineteenth and twentieth sessions of the Working Group on International Payments, which had been engaged in drafting a model law on international credit transfers, both electronic and paper-based. The report would also deal with the duties of the parties to the transfer, and the responsibilities in the event of error, delay or failed transfers. The Commission had also considered and approved the report of the Working Group on International Contract Practices, currently engaged in drafting a uniform law on guarantees and stand-by letters of credit, which was intended to eliminate the disparities between different legal systems, and would focus on issues such as validity and enforceability, time of effectiveness and expiry, liability of the parties and objections to payments. His delegation was also pleased to see that the Working Group on the New International Economic Order had begun a draft of a model procurement law, intended to help both developed and developing countries in restructuring or improving their relevant laws and procedures.

38. His delegation supported the Commission's decision to defer a possible increase in its membership. It also supported the Commission's observation that the programme for the United Nations Decade of International Law should take account of the fact that international trade law was an important and integral part of international law, and in particular was an important element in strengthening the rule of law in international economic relations. His delegation was happy to note that the Commission had identified several types of activity for inclusion in the programme for the Decade, with the objectives of promoting the teaching, study

(Mr. Gill, India)

and dissemination of international law and of promoting the acceptance of legal texts emanating from the work of the Commission and of other international organizations.

39. His delegation was pleased to note that the Commission was co-ordinating its work with those of other international organizations in general and with those of the Asian-African Legal Consultative Committee in particular, as exemplified by the organization of a seminar in New Delhi jointly with that Committee, with UNCTAD and with the International Institute for the Unification of Private Law (UNIDROIT).

40. His delegation once again reaffirmed its support for the Commission's programme of training and assistance, funded by annual voluntary contributions to the relevant trust fund. It mentioned in particular that the UNCITRAL Symposium on International Trade Law was of great use to lawyers and government officials from developing countries, and offered its congratulations to the Commission for its efforts in this area.

41. Mr. ABRAHAMSEN (Denmark), speaking on behalf of the five Nordic countries (Finland, Iceland, Norway, Sweden and Denmark) expressed those countries' satisfaction with the work of UNCITRAL, in which they took an active part. They had been particularly interested in the work of the Working Group on International Payments with regard to the preparation of a model law on international credit transfers, which was of great importance to banking practice and also touched upon the more general problems of the impact of modern technology on contract law. Of the instruments drawn up by UNCITRAL, the 1980 Convention on Contracts for the International Sale of Goods had been particularly welcomed by the Nordic countries, and was now in force in Denmark, Finland, Norway and Sweden.

42. The Nordic countries were looking forward to the results of the International Conference of Plenipotentiaries to be held in Vienna in April 1991, at which the Convention on the Liability of Operators of Transport Terminals in International Trade, prepared by the Working Group on International Contract Practices, would be adopted. The success of the Conference appeared assured. The Nordic countries were also looking forward to the results of the work of the other working groups.

43. The Nordic countries were confident that UNCITRAL would be able to contribute effectively to the United Nations Decade of International Law, especially with regard to the teaching, study, dissemination and wider appreciation of international trade law. In view of the increasing importance of international trade in the years to come, and of the scarce resources at UNCITRAL's disposal to resolve the numerous problems arising out of that trend, the Nordic countries felt that the Commission should make recommendations as to which new topics it should take up.

The meeting rose at 11.15 a.m.