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at 10 a.m.  
New York

SUMMARY RECORD OF THE 3rd MEETING

Chairman:

Mr. MIKULKA

(Czechoslovakia)

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The meeting was called to order at 10.20 a.m.

ORGANIZATION OF WORK (continued) (A/C.6/45/1; A/C.6/45/L.1)

1. The CHAIRMAN drew attention to document A/C.6/45/L.1, paragraph 6, which contained the timetable adopted at the second meeting. If he heard no objection, he would take it that the Committee wished to take note of document A/C.6/45/L.1 and to adopt the other recommendations set out in sections III to VI.

2. It was so decided.

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

3. Mr. BONNELL (Chairman, United Nations Commission on International Trade Law (UNCITRAL)), introducing the Commission's report on the work of its twenty-third session (A/45/17), said that consideration of the draft chapters of the legal guide on drawing up contracts in international counter-trade transactions had been the major item on the Commission's agenda for that session. Although the subject of counter-trade had been on the Commission's agenda for the past 15 years under different names, particularly under the general title of "barter-like contracts", the decision to begin active work on the subject had first been made in 1986 when the Commission had been discussing the question of future work in the area of the new international economic order. Although nearly all developed as well as developing countries engaged in counter-trade, it had become a means of carrying on international trade that was increasingly associated with the developing countries. At the Commission's twenty-first session, in 1988, a study of legal issues in international counter-trade had been submitted by the Secretariat (A/CN.9/302). After discussing the study, the Commission had decided that it would be desirable to prepare a legal guide on drawing up counter-trade contracts, and had requested the Secretariat to prepare a draft outline of such a legal guide so as to determine what action should be taken. At the twenty-second session the draft outline had been received from the Secretariat (A/CN.9/322). On the basis of that outline the Commission had decided that such legal guide should be prepared, and the Secretariat had been requested to prepare draft chapters of the guide for preliminary consideration at the twenty-third session.

4. It was well known that the practice of counter-trade posed many practical problems for the practitioner. What was less well known was that it also posed many legal problems that were different from the usual problems encountered in a contract of sale or of services where the counter-performance was the payment of money. The decision to prepare a legal guide had been influenced by the fact that such legal problems and the possible solutions were not widely understood, and by the fact that that lack of understanding was detrimental to international trade, in particular in the case of the developing countries.

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5. The Commission had been of the view that a legal guide should be prepared to help participants in counter-trade transactions to overcome the legal problems involved in them. It considered itself particularly well suited to undertake the task, since it was a specialized legal body in international trade law and was composed of States from all regions and at different levels of economic development. Although somewhat similar work was being undertaken by the Economic Commission for Europe, UNCITRAL had been of the view that the differences in membership and orientation of the two organizations would ensure that its own work would not duplicate what was being done in the Economic Commission.

6. The Secretariat had placed before UNCITRAL, at its twenty-third session, a draft of more than half the number of chapters (A/CN.9/332 and Add.1-7) that were expected to be included in the final version of the legal guide. The Commission had devoted a major part of the session to a careful review of them, which attested to the importance it attached to the subject. While a large number of individual suggestions for improvement had been made, the Commission had found that the legal guide addressed the concerns of the parties and attempted to deal with them in a fair and equitable manner. It had been especially pleased that the draft had taken into account the fact that the level of economic development and the interests of the parties involved in counter-trade transactions might be different, and that those factors might affect legal as well as more strictly business considerations. It had been evident by the end of the discussion that the Commission was well satisfied 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.

7. UNCITRAL had then considered the procedure that should be followed to complete the preparation of the legal guide. It had been thought that a working group should review the remaining draft chapters before placing the draft legal guide before the Commission. Since counter-trade was being considered as part of the Commission's commitment to contribute to the development of the new international economic order, the most appropriate body to review the remaining chapters would have been the Working Group on the New International Economic Order. However, the Commission had recognized that that Working Group was currently fully occupied with the draft model law on procurement, and might remain so for some time. It had been noted that the Working Group on International Payments would be available in 1992, and in view of the time needed to complete the remaining draft chapters, it had been decided that a meeting of that Working Group might be scheduled to that end for September 1991. Anticipating that the final text of the legal guide would be ready in 1991, the Commission had requested the Secretariat to submit the text to it at its twenty-fifth session, in 1992, for final approval.

8. Judging from the general discussion at the session and from delegations' reactions to the draft legal guide, the guide would be an important and useful contribution to traders generally and to those engaged in or contemplating engaging in counter-trade in particular, and it would effectively improve the quality of counter-trade contracts. It would be as effective and useful as the UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial

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**Works.** Although the subjects covered by the two legal guides were different, their objectives were similar in that they were designed to assist traders in negotiation and in drawing up fairer contracts, which would protect their legitimate interests.

9. It was not always easy to measure the contribution that a legal guide drawn up by UNCITRAL would make to the harmonization and the unification of international trade law. Merely giving figures as to the number of copies distributed in the different languages was certainly not sufficient. The contribution must be measured in less direct ways. Therefore, it was highly satisfying to report that the Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works had received high acclaim in professional circles and reputable professional and legal journals around the world. The readership was expanding and the Secretariat was continually receiving requests for copies, which indicated that it was widely used. Reports received from individuals and organizations that had used the Guide showed that it had been very useful and had helped to improve the quality of negotiations and the drawing up and administering of contracts. That experience gave the Commission great confidence in the future of the draft legal guide on counter-trade currently in preparation.

10. As usual, the Commission had received reports from the Working Groups and the Secretariat on the progress made in the other projects currently being undertaken. As was customary, the consideration of those reports seldom took up much time because, in accordance with the Commission's practice, once it decided to undertake a project and referred it to a working group, UNCITRAL did not engage in a discussion of the merits of the draft text until the Working Group was ready to submit a final text. That policy, which had been instituted in the early years of the Commission in order to avoid duplication of work, was of even greater relevance today since the Working Groups were composed of all the States that were members of the Commission and all other States and interested international organizations were invited to participate in the meetings as observers. Nevertheless, even though it did not discuss the merits of a draft text being prepared in a working group, the Commission attached great importance to receiving the reports of the Working Groups because that enabled it to monitor progress made and plan the programme of work for the next few years.

11. The reports of the Working Groups and the Secretariat in 1990 indicated that the programme of work remained full. All three Working Groups had important subjects on their agendas and draft texts were expected to be submitted for consideration by the Commission in due course. That meant that the Commission was already fully engaged for a long time into the future.

12. The Working Group that was most advanced in its current project was the Working Group on International Payments, which was preparing a draft Model Law on International Credit Transfers. At its current session the Commission had received reports from the Working Group (A/CN.9/328 and A/CN.9/329) on the two sessions that it had held between the twenty-second and the twenty-third sessions of UNCITRAL.

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13. An unusual development in the Working Group had drawn the particular attention of the Commission. The report on the session held in November 1989 in Vienna set out at some length the rather serious concern of one of the delegations about the direction that the draft Model Law had taken. That delegation had stated that the text as it was being developed by the Working Group would be harmful rather than helpful to modern international credit transfers. The unusual aspect of that development was not that there had been controversy in the Working Group. There were always disputes about what the specific rules should be on the important points in a text being drawn up. There was also often controversy over the topics to be considered. However, it was unusual for a delegation to insist that a project being undertaken by the Commission was important and, at the same time, state that the text that was slowly emerging from the discussions in the Working Group might be harmful rather than helpful. The Commission had been led to believe that, although the views on the subject were strongly held, it would be possible to reconcile the different points of view and prepare a text that would be generally acceptable. As a result, UNCITRAL had expressed the hope that the Working Group would be able to resolve the outstanding issues and requested it to submit a text at its twenty-fourth session in the expectation that the Commission would be able to consider and adopt the Model Law at that time. Moreover, the Working Group had already held one session since the twenty-third session of UNCITRAL. It was his understanding that significant progress had been made and, while there was still much to be done at the Working Group's session to be held at Vienna later in 1990, the Commission could expect to have a draft text that would permit it to complete the Model Law at its twenty-fourth session.

14. The second most advanced project was the one entrusted to the Working Group on the New International Economic Order, namely the preparation of a model law on procurement. The report of the Working Group (A/CN.9/331) showed that it had discussed a draft of the model law that the Secretariat had prepared. The Working Group had made a number of suggestions to the secretariat as to how the text might be improved. UNCITRAL had noted that the Working Group would meet again in October 1990 to consider the Secretariat's revised draft of the model law and had only made one substantive comment to the effect that the work on the model law should take into account procurement by private companies as well as Governments since private companies were increasingly resorting to the type of procedures discussed in the draft model law. The Commission was not yet in a position to say when the draft model law would be ready for submission.

15. The Working Group on International Contract Practices had also submitted a report (A/CN.9/330). UNCITRAL had requested it in 1988 to examine the draft uniform rules on guarantees being prepared at that time by the International Chamber of Commerce (ICC). After reviewing the draft rules, it had become clear to the Working Group that, owing to their contractual nature, important gaps would remain and could be filled only at the statutory level. In 1989, the Commission had adopted the Working Group's recommendation to commence preparation of a uniform law.

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16. At its session in January 1990, the Working Group had discussed some of the possible issues that might be covered in a uniform law on guarantees and stand-by letters of credit. At the close of its session, the Working Group had requested the Secretariat to prepare, for consideration at its next session, a draft set of articles, with possible variations, on the above-mentioned issues as well as a note referring to all other issues that might be included in a uniform law. Since then, the Working Group has held another session, during which it had considered the documentation that it had requested and made progress towards completion of its current mandate as expected by the Commission.

17. The preparation of the draft Model Law on International Credit Transfers, which was part of the current work programme, was in accordance with the commitment undertaken by the Commission at its seventeenth session in 1984 to consider legal problems related to automatic data processing as a priority item in its programme of work. At the 1989 session, the Commission had requested the Secretariat to submit to it in 1990 a study on the legal issues arising in the formation of international commercial contracts by electronic means. The request had been made because there was no international legal régime for that important and rapidly growing practice and since work in that area could help fill a legal vacuum and reduce the uncertainties and difficulties encountered in practice.

18. The report submitted at the twenty-third session by the Secretariat (A/CN.9/333) showed that the concerns expressed in the Commission were shared by other forums - national, regional and sectoral. The proper ways to overcome them, however, were still unclear. Accordingly, UNCITRAL had accepted the Secretariat's recommendation that it should continue its examination of the legal issues in the hope that, on the basis of its report to the twenty-fourth session, the Commission would be able to decide on the type of work to be undertaken in the field.

19. Since the previous report (A/44/17), the international community had increasingly accepted the legal texts prepared by the Commission. That was particularly true with regard to the United Nations Convention on Contracts for the International Sale of Goods, which nine additional States had adopted (Bulgaria, the Byelorussian Soviet Socialist Republic, Chile, Czechoslovakia, the Federal Republic of Germany, Iraq, Spain, Switzerland and the Ukrainian Soviet Socialist Republic), bringing the total number of States parties to 28. Furthermore the Soviet Union would be depositing its instrument of accession to the Convention in the near future. Czechoslovakia had also acceded to the 1980 Protocol amending the Convention on the Limitation Period in the International Sale of Goods, which brought to seven the number of States parties to the Convention as amended by the Protocol, while four States were parties to the unamended Convention. The Commission hoped that those four States would accede to the Protocol and that additional States would accede to the Convention. With regard to the United Nations Convention on the Carriage of Goods by Sea (the "Hamburg Rules"), three States had acceded to the Convention, thereby reducing to three the number of additional States that must ratify or accede to the Convention for it to enter into force. It was increasingly obvious that its entry into force was only a matter of time. That was all the more important since a number of other States hoped to ratify the Convention once it came into force. Lastly, Canada, the Union of Soviet

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Socialist Republics and the United States of America had signed the United Nations Convention on International Bills of Exchange and International Promissory Notes. Its speedy entry into force would depend on the ratification of the Convention by those States and prompt accession by other States.

20. The promotion of UNCITRAL as an institution and of the legal texts it produced was essential to ensure the adoption of those texts by large numbers of States. The Commission realized that the quality of their preparation and the importance of the subject-matter were not sufficient to guarantee their adoption. While both the Commission and individual members participated actively in such promotion activities, the Secretariat certainly carried the primary burden. Since 1987, the Secretariat had developed an expanded programme which was being carried out mainly in the developing countries through the Commission's programme of training and assistance. As a result of the seminars organized by the Secretariat and the latter's participation in meetings organized by other organizations, there had been a steady increase in the number of adoptions of legal texts prepared by UNCITRAL. At the same time, the Secretariat was receiving an increasing number of requests for technical assistance and for regional and national seminars. That posed some problems in view of the resources available, but in the long term additional adoptions by States of texts prepared by UNCITRAL could be expected.

21. The first seminar, held at New Delhi in October 1989 and hosted by the Indian Council of Arbitration, had been sponsored by the Asian-African Legal Consultative Committee (AALCC), UNCITRAL, UNCTAD and the International Institute for the Unification of Private Law. It has been organized for the particular benefit of the Asian States members of AALCC, but there had also been many participants from the Indian Council of Arbitration. While AALCC had made all the local arrangements, UNCITRAL had paid the travel costs of some of the participants, as well as some of the administrative costs. Lectures had been given by members of the secretariats of the three organizations sponsoring the seminar.

22. The second seminar on the work of UNCITRAL had been held in Moscow in April 1990 for 21 participants from developing countries. It had been financed from a trust fund established by the Soviet Union with the United Nations Development Programme for the training of individuals from developing countries. The seminar had been hosted by the School of International Private and Civil Law and the School of International Business of the Moscow State Institute for Foreign Relations.

23. The Secretariat had also organized a seminar at Conakry (Guinea) in March. Some 120 participants from the relevant ministries, the university and the private sector had attended. UNCITRAL had requested the Secretariat to organize seminars of that type, which were an effective way of informing a significant number of individuals in a given country of the work of the Commission.

24. In September 1990, the Secretariat had organized a series of one-day seminars on the Hamburg Rules, sponsored also by the Comisión Centroamericana de Transporte Marítimo (COCATRAM).

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25. A seminar was to be held for the 17 francophone States of North and West Africa during the fourth quarter of 1990. A Government in the region had been approached about hosting the seminar. The Secretariat was also holding discussions with the secretariat of the South Pacific Bureau for Economic Co-operation, with a view to sponsoring a seminar in the Pacific region early in 1991. Lastly, UNCITRAL had approved a plan to hold the fourth UNCITRAL Symposium on International Trade Law during the Commission's twenty-fourth session (Vienna, June 1991).

26. With all those activities, both past and planned, the Commission's programme of training and assistance had been vastly expanded. That programme required considerable resources. As far as human resources were concerned, the greatest burden fell on the Secretariat, despite a reduction in its staff. The financing of seminars posed a problem since no appropriation for them was included in the regular budget. UNCITRAL was therefore grateful to the Soviet Union for having helped to finance the seminar in Moscow through the UNDP/USSR Trust Fund. It had also expressed appreciation to France and Luxembourg, which had contributed to the UNCITRAL Trust Fund for the financing of the seminar to be held in francophone Africa, and to Finland, Canada and Switzerland for having made contributions on a multi-year basis.

27. UNCITRAL once again called on all States to assist it in financing seminars, not only by contributing to the UNCITRAL Trust Fund on a multi-year basis, but also by participating in the financing of one of the seminars currently planned, especially the fourth UNCITRAL symposium (June 1991).

28. He believed that the programme of seminars had helped significantly to make the work of UNCITRAL more widely known and had had an impact on the adoption of the Commission's texts. He therefore asked the members of the Committee to suggest to their Governments that they should contribute to the UNCITRAL Trust Fund for the financing of the seminars.

29. For UNCITRAL, the timing of the United Nations Decade of International Law could not have been better: on 17 December it would mark the adoption by the General Assembly of resolution 2205 (XXI) by which UNCITRAL was created. No one doubted that, during the past 25 years, considerable progress had been made in the development of international trade law. However, so far UNCITRAL had not had an opportunity to step back and evaluate that progress, to see what might have been done that had not been done, and to see what new types of initiatives would be appropriate for the future. The Decade would not only give it an excellent opportunity to carry out that overall evaluation, but would force it to do so, which by itself was a guarantee of success in respect of UNCITRAL and international trade law.

30. The Decade would no doubt provide an opportunity for the world community to reconsider how the rule of law could be strengthened in international affairs. UNCITRAL had not attempted to enter into the debate on the question in its many manifestations, as the Committee would undoubtedly do during the current session. It had, however, concluded, on the basis of its own experience, that, as far as international trade law in particular and perhaps public international law in

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general were concerned, the adoption by a greater number of States and the effective implementation of existing texts were often of greater value than the elaboration of new texts. For that reason, it had particularly emphasized the need to develop the teaching, study, dissemination and wider appreciation of international trade law and to promote the acceptance of legal texts emanating from its work and from that of other intergovernmental and non-governmental organizations dealing with international trade law. It had therefore reverted, in the context of the Decade, to the question of the financing of its programme of training and assistance and to the promotion of legal texts; it hoped that the Decade would result in a reduction of the financial problems and thus facilitate its promotion activities. However, at the international level, all that could be done was to draft legal texts of high quality and promote their adoption. In the final analysis, it was up to each State to decide whether it would take advantage of the opportunities offered to it and it was to be hoped that the Decade would encourage at least a few additional States to adopt and implement the increasing number of international trade law instruments.

31. UNCITRAL had taken up a suggestion made the previous year in the Committee that an attempt should be made to find a way of financing the travel costs of experts from developing countries, and especially from developing countries that were members of UNCITRAL, so that they could attend its sessions and those of its Working Groups; otherwise those countries might find themselves unable, for purely financial reasons, to participate actively in the creation of international trade law.

32. With regard to the preparation of legal texts, UNCITRAL looked upon the Decade as an opportunity to take an inventory of what had been done, of what it had decided in the past not to do and of what new types of initiatives it should undertake. The view had been expressed that it should turn to the preparation of general principles in particular areas of international trade law, in addition to the work it was doing on more detailed rules. It had also suggested that the relationship between the work it was doing at the universal level in the context of the United Nations and that of other organizations engaged in similar work should be studied. In particular, a request had been made that UNCITRAL should consider the problems of universal versus regional unification. Lastly, it had been proposed that UNCITRAL should dedicate one session to a review of developments in the field of international trade law since 1980.

33. At the twenty-third session of UNCITRAL, consideration of the United Nations Decade of International Law had been limited to a general listing of ideas. When it learned more about what the Sixth Committee envisaged for the Decade, he was sure that UNCITRAL would offer more precise suggestions as to how international trade law could be included in it. In addition, he was sure that the Secretariat would use the ideas which had already been expressed as the basis for suggestions as to how UNCITRAL could best benefit from the initiative which the General Assembly had taken in proclaiming the Decade.

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34. The twenty-third session had been one of solid achievement, as had been the period of 25 years since the establishment of UNCITRAL. As it approached its twenty-fifth anniversary, UNCITRAL looked forward to a second 25 years of continued achievement.

35. Mr. VAN DE VELDE (Netherlands) said that the present recodification of his country's patrimonial law had been significantly influenced by the United Nations Convention on Contracts for the International Sale of Goods of 1980, which his country would probably ratify within a very short time. Since the Netherlands was the depositary of The Hague Conventions relating to a Uniform Law on the International Sale of Goods and to a Uniform Law on the Formation of Contracts for the International Sale of Goods, that ratification would be of a certain historic significance.

36. The draft model on international credit transfers which the Working Group on International Payments was preparing was a logical sequel to the Convention on Contracts for the International Sale of Goods. It should be noted that the Commission of the European Communities had expressed great interest in the draft model law. His delegation was confident that the Working Group would be able to resolve the outstanding issues at its next session and submit a text to UNCITRAL at its session in 1991.

37. His delegation also welcomed the convening of a diplomatic conference in 1991 with a view to the adoption of a convention on the liability of operators of transport terminals in international trade.

38. With regard to the draft model law on procurement, his delegation suggested that subparagraphs (b) to (d) of article 28, paragraph 7, dealing with the examination, evaluation and comparison of tenders should be simplified by providing merely that tenders should be evaluated on the basis of objective and quantifiable criteria set forth in the procurement documents.

39. As for the draft uniform law on guarantees and stand-by letters of credit, his delegation had noted with approval the initial contours for a solution to the problem of non-documentary conditions in the essentially independent documentary undertakings which the Working Group on International Contract Practices had agreed on at its fourteenth session.

40. In view of the importance of the UNCITRAL programme of training and assistance, his delegation fully supported the efforts of the Secretariat to secure the financial, staff and administrative support necessary to place the programme on a firm and continuing basis.

41. With regard to the participation of UNCITRAL in the United Nations Decade of International Law, he felt that the wider adoption and effective implementation of existing texts would be of greater value than the elaboration of new texts, as had been suggested. The programme of training and assistance could make a positive contribution to the activities of the Decade in respect of the teaching, study, dissemination and wider appreciation of international law, and, in particular, of international trade law.

42. Mr. MAHNIC (Yugoslavia) welcomed the general approach taken by the authors of the draft legal guide on drawing up contracts in international counter-trade transactions, who had conceived of it as containing only recommendations on relations specific to that type of transaction, even though they might not have been consistent in applying that principle throughout the entire text of the draft. The scope of application of the draft legal guide should not be limited to the type of transaction that stipulated the obligations of parties in a separate contract since that would exclude many types of counter-trade transactions whose practical importance was not negligible. It would have been logical for future work on the draft legal guide to have been entrusted to the Working Group on the New International Economic Order, but since that Working Group was currently busy, his delegation saw no problem in entrusting the work to the Working Group on International Payments, which was expected to be available in 1991. It was important to complete the work as soon as possible and his delegation welcomed the fact that UNCITRAL intended to present the final text of the draft legal guide at its twenty-fifth session in 1992.

43. With regard to the draft model law on international credit transfers, his delegation hoped that the outstanding issues would be resolved at the following session of the Working Group on International Payments and that the text of the draft model law could be submitted to UNCITRAL at its twenty-fourth session. It was important to find solutions without delay to the new legal problems arising in the field of electronic funds transfers and the formation of contracts by electronic means. However, since those were completely new and delicate questions in a highly technical field and were, moreover, currently being considered within the European Communities and in the United States, his delegation concurred with the decision of UNCITRAL to request the Secretariat to submit a report to it at its twenty-fourth session so as to enable it to decide what work it might undertake in that field.

44. In view of the importance of training and assistance in the field of international trade law, his delegation welcomed the efforts made by the Secretariat to increase the number of seminars and symposia.

45. UNCITRAL should make its own contribution to the United Nations Decade of International Law. One of its priorities in that respect should be the elaboration of legal texts in order to promote the further development of international trade law. It would therefore be useful if the Secretariat were to prepare a study identifying the areas of international trade law which were not regulated satisfactorily or not regulated at all, and if UNCITRAL were to draw up a programme of work on the progressive development of international trade law for the entire Decade.

The meeting rose at 11.40 a.m.