



SUMMARY RECORD OF THE 4th MEETING

Chairman: Mr. FRANCIS (Jamaica)

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AGENDA ITEM 127: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
ON THE WORK OF ITS NINETEENTH SESSION (continued)

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The meeting was called to order at 3.15 p.m.

AGENDA ITEM 127: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS NINETEENTH SESSION (continued) (A/41/17)

1. Mr. ROSENSTOCK (United States of America) said that the Commission's recommendation in paragraph 224 of its report (A/41/17) that the draft Convention on International Bills of Exchange and International Promissory Notes should be put into a form in which it could be adopted by the General Assembly as final was realistic and wise. UNCITRAL was aware that it would need to carry out some of the functions - such as dealing with the remaining questions of substance, reviewing the drafting of the Convention and adopting each of its articles - that would otherwise be performed by a diplomatic conference (costing \$2-3 million) or by the General Assembly if it undertook a detailed examination of the draft. However, UNCITRAL had been unable to complete that work at its nineteenth session, which had been shortened by one week. It had therefore recommended that another session of its Working Group on International Negotiable Instruments should be held in January 1987 to consider the draft once more, and that UNCITRAL should then devote two weeks of its twentieth session to reviewing and approving the draft in the form in which it would be submitted to the General Assembly for adoption. His delegation believed that the considerable work already done by UNCITRAL should now be completed, and it strongly supported the recommendation to that effect.
2. Another important task that the Commission wished to complete at its twentieth session was the drafting of the legal guide on drawing up international contracts for the construction of industrial works. That guide would set out the many types of provisions found in international construction contracts, without making any value judgements, which would, moreover, be impossible in view of the great variety of construction contracts between entities in countries of varying stages of development. The legal guide would prove useful not only for negotiators from developing countries for whom it was primarily designed, but also for those from industrialized nations. The UNCITRAL secretariat would be producing a revised version of the several dozen draft chapters of the guide that would reflect the discussions of earlier drafts in the Working Group on the New International Economic Order. The revised document would be thoroughly reviewed by the Working Group at a three-week session to be held in March-April 1987, and the Commission itself would devote a week to reviewing and adopting the final text at its twentieth session.
3. His delegation supported UNCITRAL's decision to request its secretariat to prepare on a priority basis a study on major issues relating to procurement, in order to permit the Working Group to focus its attention on a legal guide on that subject.
4. During the fourth week of its twentieth session, the Commission would review the other items on its agenda and its future programme of work. His delegation considered a four-week session necessary to ensure that UNCITRAL could complete its work on international bills of exchange and on the legal guide.

(Mr. Rosenstock, United States)

5. His delegation also supported the proposal that the Working Group preparing draft rules on the liability of operators of transport terminals should meet in December 1986. Also, it noted that the Commission had authorized publication of the legal guide on electronic funds transfers on the basis of which the secretariat would prepare a study on the legal issues identified in the final chapter of that guide.

6. The secretariat document entitled "Current activities of international organizations related to the harmonization and unification of international trade law" (A/CN.9/281), which gave a detailed account of what was happening in that area, should prove extremely helpful to Governments in co-ordinating their activities, in addition to helping the international organizations involved to avoid duplication of work on the subject.

7. It seemed likely that his Government would very soon be in a position to ratify the 1980 Convention on Contracts for the International Sale of Goods. That meant that it might come into force soon after the 1974 Limitation Convention, which was likely to be the first convention prepared by UNCITRAL to enter into force.

8. Mr. CALERO RODRIGUES (Brazil) said that the creation of a unified set of rules applicable to international negotiable instruments was a goal to be encouraged. In such a complex field, in which custom had evolved over many decades, it was natural that there should be concern as to the quality of the unified law which would be elaborated. His delegation was of the view that if the draft Convention on International Bills of Exchange and International Promissory Notes was really to serve the objective for which it was envisaged, it must fulfil three basic conditions. First, it must assimilate the essence of the two major legal systems - common law and Roman law - and at the same time discard what had become outmoded in them. The Convention must come to be regarded by all States as a better alternative to existing possibilities, rather than as a third option, which would only complicate matters further. Secondly, it must achieve consistency in the formulation, interpretation and implementation of rules. That called for a precise formulation of terms and definitions and the avoidance of excessive cross-references and qualifications. Since the Convention would be applied by countries with different legal systems, the use in it of loose terminology that would give rise to conflicting interpretations should be avoided. Lastly, the new instrument should be supported as widely as possible, since it would be effective only if it enjoyed the support of all States or at least the overwhelming majority.

9. UNCITRAL had dedicated itself to the task of translating those elements into concrete terms and had achieved a set of draft articles that reflected considerable maturity. The report indicated, however, that further refinement was still necessary. His delegation therefore welcomed the decision taken by UNCITRAL to submit the draft once more to the Working Group on International Negotiable Instruments, which would work on the basis, inter alia, of additional comments received from Governments. It was to be hoped that UNCITRAL would be able to conclude its work on the subject at its twentieth session.

(Mr. Calero Rodrigues, Brazil)

10. He recalled that the parties to the 1930 Geneva Convention had shown interest in undertaking consultations in order to determine the status of their obligations under that instrument in the light of the new Convention. That would be a good way of ensuring speedier accession to and wider acceptance of the new Convention.

11. With respect to the procedure to be followed in adopting the draft Convention, his delegation thought that a diplomatic conference would be the best solution, but that even if the financial situation of the United Nations improved, it would hardly be possible to consider convening such a conference in the foreseeable future. His delegation therefore hoped that the Working Group and UNCITRAL would continue their work to draw up a generally acceptable text and that the General Assembly itself would then be in a position to adopt the Convention and open it for signature.

12. The Commission suggested in paragraph 224 of its report that the draft Convention should be transmitted to the General Assembly with a recommendation that it should be adopted "without amendment of the substance of the text". It seemed that UNCITRAL wished to know whether the General Assembly would be prepared to follow that course. In view of how carefully that text had been drafted and the delicate balance that had been achieved between the different provisions, it was understandable that UNCITRAL should be concerned lest the General Assembly reopen the debate on substantive issues during its consideration of the draft. It was highly desirable that the General Assembly should try not to introduce changes that might impair the final result. However, his delegation was not sure that the Assembly would be in a position at the current stage to limit its own prerogatives by committing itself to adopt the UNCITRAL draft "without amendment of the substance of the text". His delegation was prepared to oppose substantial changes that would endanger UNCITRAL's work and trusted to the wisdom of other delegations to do likewise. At the current stage, it could commit itself no further.

13. The legal guide on electronic funds transfers recently completed by the UNCITRAL secretariat was a significant contribution to the harmonization of practices and legal rules in a field that had been evolving rapidly as a consequence of the increasingly widespread use of electronic means in transactions between banks. Few countries, however, had developed legislation on the subject. Wide distribution of the guide would therefore be useful, especially for those countries that were beginning to introduce electronic funds transfers into their banking systems. The formulation of model legal rules would be a natural step following an examination of the guide by all interested Governments and organizations. Such model rules must be flexible to avoid rapid obsolescence as technology evolved.

14. At its eighth session, the Working Group on the New International Economic Order had made satisfactory progress in the preparation of a legal guide on drawing up international contracts for the construction of industrial works. His Government concurred with UNCITRAL that it would be useful for the Secretariat to revise the draft to ensure that it was thoroughly consistent, and that the Working Group could review it in detail at its ninth session. The preparation of the draft legal guide was just one of the building-blocks of the new international economic

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(Mr. Calero Rodrigues, Brazil)

order. As the old order proved to be less and less able to meet the pressing needs of the modern world, it was incomprehensible that change was meeting with so much opposition. The step-by-step approach adopted by UNCITRAL did much to allay fears and create a climate of confidence. A more comprehensive change would, of course, be preferable, but through patient labour UNCITRAL had paved the way for a more widespread consciousness that a new economic order must be established. The suggestions made for the future work of UNCITRAL in that area were interesting, particularly with regard to contracts for industrial co-operation, joint ventures, countertrade and procurement. All of those topics must be considered sooner or later, but procurement should be taken up first.

15. His delegation noted with interest the reports submitted by the Secretariat on co-ordination with other bodies in the field of international trade law, and the detailed statements made at the nineteenth session by the Secretary-General of the Asian-African Legal Consultative Committee and by the Deputy Secretary-General of the Hague Conference on Private International Law. Brazil also appreciated the reports on current activities of international organizations related to the harmonization and unification of international trade law and on the activities of other international organizations in the field of international commercial arbitration. His delegation endorsed UNCITRAL's decision to request the Secretariat to submit in-depth studies on multi-party arbitration and on the taking of evidence in arbitral proceedings at a future session. UNCITRAL's activities in that field had helped to establish its reputation as the core legal body in the field of international trade law, where it assumed the role of principal organ for co-ordination.

16. The report on the legal aspects of automatic data processing was interesting, and he supported the idea that UNCITRAL should take the initiative in further improving that co-ordination. Finally, his Government appreciated the report on training and assistance, and welcomed UNCITRAL's involvement in the holding of a regional seminar on international trade law and foreign trade in Bogota, for such events were of particular value to personnel from developing countries.

17. Mr. AL-QAYSI (Iraq) said he was impressed that UNCITRAL had made such progress in its work on the draft convention on International Bills of Exchange and International Promissory Notes.

18. Among the three possible procedures considered by UNCITRAL for adoption of the draft as a convention, the one for which it had opted (A/41/17, paras. 221-224) was the closest possible simulation of diplomatic-conference procedure. Iraq was aware that, in that regard, the Commission's decision had been prompted by financial considerations - well-founded at that - but the success of the procedure envisaged as a substitute for holding a diplomatic conference would depend on a number of factors (extent of participation by States in the process of finalizing the UNCITRAL text, the Commission's relative success in reasonably satisfying the concerns of States, the degree of harmonization achieved, etc.), which were difficult to assess for the time being. Two elements, however, seemed to indicate that the procedure recommended by the Commission would not sacrifice hard-core interests: the length of time the Commission had taken to elaborate the text of

(Mr. Al-Qaysi, Iraq)

the draft Convention, and the highly responsible attitude assumed by the Commission in the performance of its tasks. His Government was therefore ready in principle to entertain the procedure proposed by UNCITRAL, provided the draft resolution to be adopted by the Sixth Committee indicated that that procedure was due to exceptional circumstances and should not be regarded as a precedent. The final position of the General Assembly in that respect would have to be adopted at the following session, when it would be possible to determine whether the conditions outlined had been fulfilled.

19. Iraq wished to express its satisfaction with the manner in which UNCITRAL had dealt with the other items in its programme of work. The Commission deserved special praise for its determination to make the interests of the developing countries an important consideration in all aspects of its work, particularly in the field of training and assistance.

20. Mr. SCHARIOTH (Federal Republic of Germany) stressed that his Government attached great importance to the work of UNCITRAL.

21. The Working Group on the New International Economic Order would soon complete its deliberations on international contracts for the construction of industrial works. The legal guide it had prepared contained a valuable analysis of the legal difficulties to which such contracts gave rise, and made useful suggestions for possible solutions. His delegation was therefore looking forward to the work that the Working Group would be undertaking in the area of procurement.

22. He was pleased to note that the Working Group on International Contract Practices had made rapid progress in the matter of the liability of operators of transport terminals. The Working Group's endeavours in that area would fill a serious gap in the field of international transport law. His Government hoped that in response to the significant progress made in the unification of international law, a number of States would ratify the Conventions elaborated by UNCITRAL in the realm of transport law, in particular the 1978 Convention on the Carriage of Goods by Sea ("Hamburg Rules"). In that context, he wished to stress that that German Sea Freight Law had recently been updated by incorporating the very substance of the 1968 Brussels Protocol to the 1924 International Convention for the Unification of Certain Rules relating to Bills of Lading. That incorporation by no means constituted a decision not to ratify the Hamburg Rules at a later date. On the contrary, non-ratification of the 1968 Brussels Protocol was intended to make it clear that his Government was holding ratification of the Hamburg Rules as an option to be exercised as soon as its important trading partners moved towards ratification.

23. His delegation had followed the work of the Working Group on International Negotiable Instruments with interest, but with a measure of scepticism as well. There was no need to introduce a new type of bill of exchange, as the coexistence of two systems had not given rise to serious problems. If, in commercial circles, sufficient use was not made of the new instrument - which might well be the case - a convention based on the UNCITRAL draft could contribute to fragmentation, rather than unification, of international trade law. It was highly unlikely that such a

(Mr. Scharloth, Federal
Republic of Germany)

convention would be approved by the required number of States to make it universally effective. Therefore, the need to adopt such a convention should be reconsidered.

24. If a majority of States, however, did favour that approach, his Government would advocate what was mentioned in the report as the second possible procedure for adopting the draft. As the remaining problems were of a more technical nature, that procedure would ensure that all States examined the draft as carefully as they would in a diplomatic conference; its lower cost would be another advantage.

25. His Government was pleased to note the progress made by UNCITRAL in co-ordinating the activities of international organizations in the field of international trade law, and it encouraged the secretariat of UNCITRAL to keep up the good work.

26. Mr. BADR (Qatar) said that, of the three possible procedures for adopting a Convention on International Bills of Exchange and International Promissory Notes, his delegation preferred the second. It did not object to forgoing the normal procedure of convening a diplomatic conference in the present instance, given not only the financial difficulties of the United Nations but also the extremely technical nature of the subject. The measures envisaged (expanding the Working Group to include all member States of UNCITRAL, giving States not members of the Commission the opportunity to participate as observers in the work of the Working Group, transmitting the draft Convention to Governments for comments, prior to the General Assembly session) should make it possible to adopt a convention under circumstances as favourable as those to be found at a diplomatic conference while avoiding the considerable costs that such a conference would entail. The third procedure, which differed from the second only in that, instead of the Working Group reviewing the draft, the secretariat of UNCITRAL would undertake a final revision of it, also seemed acceptable since the secretariat had always proved up to its work.

27. He hoped that the General Assembly would consider it reasonable to adopt such a technical document, which it had taken highly qualified experts over fifteen years to draft, without reviewing its substance. To do so would neither create a precedent nor mean that the General Assembly was waiving its prerogatives.

28. Mr. AL-KHASAWNEH (Jordan) paid tribute to UNCITRAL for its useful and high quality work which had earned it the growing recognition of the Jordanian legal community.

29. His delegation had no strong views on the three possible procedures for adopting the draft Convention on International Bills of Exchange and International Promissory Notes. Its main concern was that the quality that had thus far characterized the work of UNCITRAL should not be affected. Contrary to what had been planned at the outset, the version of the draft Convention prepared at the nineteenth session of UNCITRAL was far from being finalized. It would therefore be premature for Governments to give their assent on the basis of that version, to the

(Mr. Al-Khasawneh, Jordan)

procedure advocated by UNCITRAL (see A/41/17, para. 220). Such a procedure would, in fact, mean that they relinquished their power to review the draft Convention. His delegation saw no reason, however, why a really definitive version should not be finalized at UNCITRAL's twentieth session. In that case, it would have no difficulty, given the financial difficulties facing the Organization, in accepting the second procedure mentioned in the report, unusual as it was. It nevertheless hoped that, if the second or third procedure was adopted, the draft resolution or draft decision adopted by the Sixth Committee would specify that the procedure in question had been chosen in response to exceptional circumstances and must not constitute a precedent.

30. His Government would endeavour to transmit to the secretariat before 15 November 1986 its comments on the draft circulated to Member States. However, his delegation wished to draw attention to the fact that the Arabic text of the draft Convention left much to be desired in so far as terminology was concerned. While the problem of legal terminology in Arabic was difficult to solve, he strongly hoped that the secretariat of UNCITRAL and UNCITRAL itself would take the necessary steps to alleviate it.

31. Although the work of UNCITRAL on issues related to the New International Economic Order had not produced any concrete results, he had to admit that the doubts which he had entertained when that item had been placed on the agenda of UNCITRAL, although not completely dispelled, had been considerably reduced. He noted with satisfaction that the Working Group on the New International Economic Order would, at its ninth session, complete its consideration of the draft chapters of the legal guide on drawing up international contracts for the construction of industrial works.

32. The regional seminar organized at Cairo in January 1986 by the Asian-African Legal Consultative Committee and the Cairo Centre for International Arbitration, with the co-operation of UNCITRAL, had been very successful and could not have been better timed, given the new interest shown by the region's lawyers in the work of UNCITRAL, especially in the field of international arbitration.

33. Mr. SCHRICKE (France) said in connection with the draft convention on international bills of exchange and international promissory notes, that his country wished to reiterate its reservations concerning the course taken by UNCITRAL's work, both at the procedural level and with regard to the results achieved. The draft, initially conceived as an attempt to reconcile two different legal systems, had not achieved that objective. The thinking of common law countries tended to predominate over that of civil law countries, thereby threatening the balance established within the system set up by the 1930 Geneva Conventions. Moreover, the draft remained unusually complex, both in form and substance, making it difficult to understand. For all those reasons, it did not appear acceptable in its present state.

34. If it was deemed necessary to follow up UNCITRAL's work on that question, his delegation would support the convening of a diplomatic conference, since the other two alternatives envisaged did not, in its opinion, offer sufficient guarantees for genuine progress. Such a conference would be more conducive to careful and

(Mr. Schricke, France)

thorough consideration of the articles of the draft Convention and would have a greater chance of producing a clear, well-balanced text. However, being aware of the financial problems that the holding of such a conference would create, his delegation would not object to its being convened, only when the requisite financial resources could be more easily obtained, rather than in 1987. If such a solution was not acceptable, it might perhaps be necessary to consider postponing that exercise sine die, thereby enabling the Working Group on International Negotiable Instruments to devote itself to other tasks.

35. His delegation welcomed the considerable progress made by the Working Group on the New International Economic Order with regard to the legal guide on drawing up international contracts for the construction of industrial works, as well as the progress made on the draft articles on the liability of operators of transport terminals entrusted to the Working Group on International Contract Practices.

36. Concerning the future work of the working groups, his delegation attached great importance to the question of electronic funds transfers and hoped that the Working Group on International Negotiable Instruments would begin to consider that subject in the very near future. It welcomed the choices made by the Working Group on the New International Economic Order from among the subjects proposed to it. The formulation of legal rules regarding procurement would be a fitting complement to the aforementioned legal guide and deserved the priority accorded to it.

37. His delegation noted with satisfaction the work done by UNCITRAL in the area of training and assistance and the initiatives taken by the Commission to co-ordinate its activities with those of other bodies involved with international trade law.

38. It approved the timetable and subjects chosen for the future work of UNCITRAL and its working groups, with the exception of the item on the follow-up to be given to the draft Convention on International Bills of Exchange and International Promissory Notes. Once again, it congratulated UNCITRAL and its secretariat on their conscientious and commendable work.

The meeting rose at 4.30 p.m.