



SUMMARY RECORD OF THE 7th 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 10.30 a.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. VENKATARAMIAH (India) said that he supported the decision that the draft Convention on International Bills of Exchange and International Promissory Notes, as finalized at the twentieth session, should be transmitted to the General Assembly with the recommendation that it should be adopted without amendment of the substance of the text; that was the proper procedure at a time when the United Nations was facing a financial crisis. The decision not to extend the scope of the draft Convention to cheques was appropriate. Some innovations had also been introduced in the realm of international private law, such as the provisions relating to signature, money and floating interest rates.

2. The Legal Guide on Electronic Funds Transfers was an excellent piece of work, setting forth the various practices currently prevalent throughout the world, and it would no doubt promote international harmonization of practices and legal rules in that sphere. India encouraged the Commission to undertake at an early date the formulation of model legal rules on electronic funds transfers.

3. India was happy to note that the Working Group on the New International Economic Order would be able to finish its work on the legal guide on drawing up international contracts for the construction of industrial works at its next session. He hoped that the guide would be of immense help to developing countries in their industrialization. He was also gratified that the Working Group on International Contract Practices would be able to complete its draft shortly.

4. Lastly, he expressed India's appreciation of the Commission's sponsorship of symposia and seminars on international trade law, which were of great use to young lawyers and government officials from developing countries.

5. Mr. SUN Lin (China) noted that the differences and conflicts in the laws in the area of negotiable instruments had affected the development of the international economy and trade. The draft Convention on International Bills of Exchange and International Promissory Notes was therefore of great practical significance, in that it had synthesized the practices of different legal systems and adapted to the development of international practices, while taking into consideration customary practices; for example, according to contemporary theory, in order to safeguard the interest of the drawee or the endorser, the drawer usually bore the responsibility of payment or acceptance before the payment of the instrument. However, article 34 (2) established that the drawer might exclude or limit his own liability for payment by an express stipulation, which was in conformity with the current practice of many countries and international financial markets. The provision in article 7 (5) of the draft Convention concerning floating interest rates, which were being used more and more extensively, would help to avoid controversies caused by different interpretations, and, moreover, the prohibition of unilateral determination of the floating interest rate would

(Mr. Sun Lin, China)

guarantee proper use of the instrument. The draft Convention still left room for improvement; for instance, the scope of protection for the holder should be duly limited, and certain reasonable restrictions which would not compromise the transferability of the instrument should also be established. Although the ideal procedure for the adoption of the Convention would be to convene a diplomatic conference, in view of the current financial crisis of the Organization many countries preferred a more economical but efficient procedure. Since there were still some different views on certain articles of the draft, the Working Group might consider meeting during the first half of 1987 to complete consideration of the comments and opinions of States so as to ensure its approval at the twentieth session of the Commission, which would then refer the final draft to the General Assembly for adoption.

6. China's assessment of the work of the Commission was positive; it was especially pleased to note that the legal guide on drawing up international contracts for the construction of industrial works, which would be of positive significance for the industrialization and economic development of developing countries, was nearing completion, and that a decision had been taken that international procurement would be a subject for future consideration by the Commission. He expressed the hope that UNCITRAL would continue its efforts to co-ordinate legal activities in the field of international trade and to promote the unification of international trade law.

7. Mr. KULOV (Bulgaria) said that the development of international trade based on equality and mutual advantage contributed to the strengthening of co-operation among States with different socio-economic systems, détente in international relations and the maintenance of world peace and security. The progressive development and codification of international trade law assisted in the establishment of just and equitable trade relations and in overcoming uncertainty and distrust in international commerce. In that respect, the draft Convention on International Bills of Exchange and International Promissory Notes was a good example of the Commission's contribution to the harmonization of legal provisions in the area of international commercial payments. The draft Convention reflected an acceptable compromise between the Anglo-Saxon and continental legal systems; elaborated on the basis of existing commercial practices and needs, it balanced the interests of all parties. Its adoption would facilitate commercial exchanges and would remove the difficulties arising from the application of different legal provisions.

8. In Bulgaria's view, there was a need to achieve greater precision in the wording of the draft and to finalize the text at the twentieth session of the Commission, with a recommendation to the General Assembly to adopt it without reconsidering it in substance. Bulgaria approved of the decision that the draft should be submitted to all States for comment.

9. Bulgaria supported the Commission's decision that the Legal Guide on Electronic Funds Transfers should be published as a Secretariat document in all official languages.

(Mr. Kulov, Bulgaria)

10. Bulgaria attached great value to the work of the Working Group on the New International Economic Order and its efforts to elaborate a legal guide on drawing up international contracts for the construction of industrial works, in view of the growing role of engineering in its foreign trade relations. The interests of all parties were taken into consideration in the draft, which would contribute to a large degree to harmonizing the drawing up of contracts of that nature, which were generally complex. Bulgaria endorsed the Commission's decision that the Secretariat should prepare initial studies on procurement, countertrade and joint ventures, inasmuch as a decision could be taken in that regard only after a comprehensive analysis had been made of the legal problems and practical needs in the suggested fields.

11. Bulgaria supported the Commission's decision that work should continue on the elaboration of uniform rules on the liability of operators of transport terminals.

12. Mr. HAYASHI (Japan) appealed to all members of the Committee to make determined efforts to improve its working methods and procedures in view of the severe financial crisis facing the United Nations.

13. Despite the fact that UNCITRAL had not been able to complete the draft Convention on International Bills of Exchange and International Promissory Notes, agreement had been reached on major issues on which opinion had been deeply divided. His delegation welcomed the decision to complete the final draft at the next session of UNCITRAL. The proposed new procedure for adopting the draft Convention was worth studying, given the technical character of the draft and the need for the United Nations to reduce expenses.

14. Japan welcomed the completion of the Legal Guide on Electronic Funds Transfers, prepared by the Secretariat in co-operation with financial experts in an area in which there had been few precedents. It also welcomed the decision to undertake work on the formulation of model legal rules, a task in which Japan was ready to co-operate.

15. The legal guide on drawing up international contracts for the construction of industrial works, which would be ready in 1987, would be very useful for many countries. His delegation was pleased to note that in its work on the subject, the Working Group on the New International Economic Order had maintained the fundamental objective of UNCITRAL, namely, the harmonization and unification of international trade law from the juridical and technical viewpoints, and that it had conducted its work with the participation of experts. The same tradition must be followed for international procurement also.

16. Japan welcomed the steady progress made in drafting uniform rules on the liability of operators of transport terminals, and would continue to co-operate actively in that area, in particular through the participation of its experts.

(Mr. Hayashi, Japan)

17. Lastly, his delegation wished to stress the importance of co-ordinating the work of the various international organizations engaged in the unification of international trade law. The report which the Secretariat submitted annually on the activities of those organizations was particularly useful in that regard. The Secretariat should follow closely the activities of other relevant international bodies so that UNCITRAL might conduct its business in the most efficient manner.

18. Mr. KANDIE (Kenya) said that his delegation had noted with appreciation the progress made on the draft Convention on International Bills of Exchange and International Promissory Notes. It endorsed the Commission's decision that outstanding matters in connection with the draft should be considered by the Working Group on International Negotiable Instruments before it was submitted to the Commission and to the General Assembly for final consideration and adoption. For the reasons set out in the report of UNCITRAL (A/41/17) and in its Chairman's introductory statement, his delegation considered the decision not to convene a diplomatic conference for the adoption of the draft Convention to be a wise one. His Government was currently undertaking a detailed study of the report and would submit its comments on it in due course. He welcomed the decision to invite all States members of the Commission to participate in the next session of the Working Group.

19. His delegation wished to reaffirm the great importance it attached to the work of the Working Group on the New International Economic Order. It appreciated the progress made by the Group in drafting the legal guide on drawing up international contracts for the construction of industrial works, and shared the hope that the guide would be completed during the next session of the Working Group. With regard to future work in the area of the new international economic order, his delegation would have preferred to see the Working Group consider joint ventures first, as it felt that the subject was of great importance, but it was prepared to go along with the decision to start with the subject of procurement.

20. He welcomed the publication of the Legal Guide on Electronic Funds Transfers and noted the progress made by the Working Group on International Contract Practices in the drafting of uniform legal rules on the liability of operators of transport terminals. His delegation approved of the programme of work of UNCITRAL proposed for 1987 and considered that, in order for it to carry out its important task, UNCITRAL must have at its disposal all the necessary resources to enable it to discharge its functions effectively. The decision to shorten the nineteenth session of the Commission had considerably impeded its work. Although it appreciated the reasons for the crisis, his delegation hoped that the current spirit of reform within the Organization would put it on course once more, thus enabling its organs to fulfil the important functions allocated to them.

21. Mr. CULLEN (Argentina) said that his delegation, which in 1986 had rejoined UNCITRAL as a full member, wished to reiterate its appreciation to those whose confidence had permitted it to occupy that position once again. His delegation had already stated its position concerning the draft Convention on International Bills of Exchange and International Promissory Notes, but wished to emphasize the need to

(Mr. Cullen, Argentina)

simplify the draft by omitting some provisions which increased the likelihood of conflicts of law. It would also like the Working Group, in which Argentina had participated, to improve the Spanish text of the draft, for which purpose the co-operation of his delegation would continue to be available. Concerning the procedure for the adoption of the draft Convention, Argentina supported the alternative chosen by UNCITRAL and welcomed the decision to enlarge the Working Group to include all States members of the Commission.

22. He welcomed the completion of the Legal Guide on Electronic Funds Transfers and the Commission's decision to authorize the Secretariat to publish it. He stressed the importance of the work of the Working Group on the New International Economic Order, and noted that some of the subjects the Group was considering were of special interest to the developing countries. He was pleased to note the progress achieved in the drafting of the legal guide on drawing up international contracts for the construction of industrial works, and reiterated how important it was for the developing countries to participate in that work.

23. He noted the progress achieved in the drafting of uniform legal rules on the liability of operators of transport terminals, and expressed appreciation of the Secretary-General's reports on the legal value of computer records and on the activities of other international organizations on certain aspects of international commercial arbitration (A/CN.9/280). As to the status of Conventions, Argentina had ratified or acceded to the Conventions that had resulted from the work of UNCITRAL. Lastly, he again expressed his satisfaction with the work of the Commission. In the past, his delegation had helped to prepare and had joined in sponsoring draft resolutions on the current item. It hoped to participate once again in 1986 in establishing a mandate that would allow UNCITRAL to continue to make progress in its work.

24. Mr. AGSTNER (Austria) said that his country, which traded with more than 150 countries, appreciated the constructive and realistic work undertaken by UNCITRAL, and would continue to co-operate actively with it. His delegation regretted that the nineteenth session of UNCITRAL had been affected by the financial crisis of the United Nations; it would have preferred that session to last the usual four weeks. He hoped that the twentieth session of UNCITRAL, to be held in Vienna in 1987, would be allotted four weeks. In 1985, his delegation had expressed the hope that the Working Group charged with drafting the Convention on International Bills of Exchange and International Promissory Notes would finalize its work in 1986. That had not been possible for the reasons already outlined. He noted, however, that progress had been achieved and that in all likelihood UNCITRAL would complete its work at its next session. The draft Convention in its current form represented an acceptable compromise between common law and civil law. With regard to the procedure for the adoption of the draft Convention, his delegation fully supported the alternative chosen by UNCITRAL. In view of the financial crisis of the United Nations, the cost of convening a diplomatic conference could not be justified. He pointed out, however, that there was no precedent for the procedure in so far as it envisaged the General Assembly adopting the draft without making any amendments. In view of the extreme technical complexity of the subject and the absence of

(Mr. Agstner, Austria)

conflicting political or economic interests, the holding of a diplomatic conference did not seem the most appropriate way to proceed. In his delegation's opinion, the Sixth Committee could adopt the innovative proposal outlined by UNCITRAL in paragraph 224 of its report, which represented a realistic and workable compromise, taking into consideration the fact that the draft had been thoroughly discussed over a period of almost 15 years and that all States had had ample opportunity to participate in the drafting of the text. Nevertheless, given the special circumstances, that procedure should not constitute a precedent.

25. Austria had always had high regard for UNCITRAL's work in the consideration of legal problems arising out of electronic funds transfers. It had participated in the Study Group entrusted with the preparation of a legal guide on the subject, which would be of great assistance to Governments and to interested financial institutions. His delegation also welcomed UNCITRAL's decision to entrust the work of formulating model legal rules on electronic funds transfers to the Working Group on International Negotiable Instruments.

26. His delegation noted with appreciation that the Working Group on the New International Economic Order would soon be completing its work on the legal guide on drawing up international contracts for the construction of industrial works, which would serve the interests of both industrialized and developing countries. In that area, procurement, countertrade and joint ventures would be important subjects for consideration by the Working Group in connection with the future work of UNCITRAL. Progress had been made in the preparation of uniform rules on the liability of operators of transport terminals, which, in Austria's view, might supplement the Convention on International Multimodal Transport of Goods and the Convention on the Carriage of Goods by Sea. His country also appreciated the reports by the secretariat of UNCITRAL on the current activities of international organizations related to the harmonization and unification of international trade law (A/CN.9/281), on the activities of international organizations on certain aspects of arbitration (A/CN.9/280) and on the legal aspects of automatic data processing (A/CN.9/279).

27. He was pleased to announce that Austria would soon ratify the United Nations Convention on Contracts for the International Sale of Goods. His delegation would carry on its tradition of co-ordinating the elaboration of the resolution on the UNCITRAL report, and was prepared to consult on the matter with interested delegations. That emphasized the great importance which Austria attached to the valuable work performed by UNCITRAL.

28. Mr. LÜTEM (Turkey), referring to the draft Convention on International Bills of Exchange and International Promissory Notes, said that although the Working Group had made significant progress, with regard to the harmonization of the differences between the common-law and civil-law systems, it had been unable to give in-depth consideration to the civil-law school of thought. Turkey was one of the signatories to the 1930 Geneva Conventions. In that context, it shared the concerns expressed by some States, such as the Federal Republic of Germany, France and Brazil regarding the need for continuity as a criterion in the formulation and interpretation of the norms, the need for a precise terminology and the need for the Convention to be accepted and ratified by a large number of States.

(Mr. Lütem, Turkey)

29. The current financial difficulties facing the United Nations seemed to rule out convening a diplomatic conference as a procedure for adopting the draft Convention. A review of the draft by the Working Group did not seem appropriate either, for, as had happened in the past, the developing countries might experience difficulties in financing the attendance of their representatives at the session of the Working Group. Opinions and disagreements which had already been expressed would probably be restated in any such review. Furthermore, because of the time constraints involved in the transmission of the draft Convention to States, and the receipt and analysis of their comments, it might not be possible to place those comments before the Working Group at the session scheduled to be held in early 1987. Consequently, the text of the draft should be prepared by UNCITRAL itself at its twentieth session and submitted to the Sixth Committee, which, if it deemed necessary, could appoint a group to draft the final text with the assistance of a document prepared by the secretariat, which would include a summary and analysis of the States' comments, the questions to be considered and a preliminary draft of the final clauses. In keeping with established practice, his delegation was not in favour of recommending the draft Convention to the General Assembly for adoption without any changes in the substance of the text. On the contrary, both the Sixth Committee and the General Assembly should be entirely free to review the draft, eliminate possible inconsistencies and make any necessary changes in its wording and substance.

30. For the time being, it would be sufficient to prepare a legal guide on electronic funds transfers, without attempting to formulate model legal rules. Referring to future work in the area of the new international economic order, he said that it would be useful to begin by considering UNCITRAL's long-term programme of work in the field and take a decision on future work only after that information had been considered. Consequently, his delegation had some difficulty in accepting the decision and the priorities outlined in paragraph 243 of the UNCITRAL report.

31. UNCITRAL, as the core legal body in the field of international trade law, should take a closer look at the issues. If it focused its attention on those which had more practical importance, it might avoid the proliferation of working groups in future. The procedure described in paragraphs 256 and 258 of its report should be reviewed in that light. In conclusion, he wished to emphasize the need to continue and strengthen the sponsorship of symposia and seminars on international trade law, which were of great value to lawyers from developing countries, and the need to promote training and assistance in that field.

32. Mr. CASTROVIEJO (Spain) said that his delegation appreciated the efforts which UNCITRAL had exerted at its nineteenth session, making substantial progress despite the fact that the activities of both the plenary Commission and the Working Groups had been curtailed in the light of the financial crisis facing the United Nations. UNCITRAL was the appropriate and necessary forum to deal with issues that were of great importance to the international community in its effort to unify and harmonize various legal systems.



(Mr. Castroviejo, Spain)

33. In the discussions at the nineteenth session of UNCITRAL, Spain had fully expressed its views on the draft Convention on International Bills of Exchange and International Promissory Notes. His delegation still doubted that it was feasible to unify the two systems of negotiable instruments that coexisted in the world of international trade through a Convention which was still not certain to be accepted by most members of the international community. A careful study should be made on the advisability of concluding the international instrument proposed.

34. UNCITRAL seemed to be leaning towards having the Working Group on International Negotiable Instruments review the draft Convention as finalized at the nineteenth session, which would then be considered and approved by the Commission itself at its twentieth session. The Commission would subsequently recommend to the Assembly that the draft Convention should be adopted without a review of the substance of the text. That procedure would not allow for the detailed review that the subject warranted and would not sufficiently guarantee that any real progress would be made in solving problems that had not been resolved in the draft. Convening a diplomatic conference, even if it would entail greater cost, would be the best approach to such a complex and delicate subject, and, as acknowledged in the UNCITRAL report itself, it would give all States an opportunity to participate in a very detailed review of the draft Convention.

35. His delegation welcomed the completion of UNCITRAL's work on electronic funds transfers with the preparation of a legal guide which for the time being, would undoubtedly be sufficient to promote harmonization and unification of national practices and laws in an area in which few countries had developed relevant legislation. It was to be hoped that the legal guide could be supplemented by the formulation of model legal rules.

36. The Working Group on the New International Economic Order had made important progress in the preparation of a legal guide on drawing up international contracts for the construction of industrial works. His Government noted with interest the new subjects proposed for consideration, such as contracts for industrial co-operation, joint ventures, countertrade and procurement. It believed that procurement should be given priority.

37. The report of UNCITRAL demonstrated the ongoing progress made with respect to other issues, such as those dealt with by the Working Group on International Contract Practices, particularly with respect to the draft articles of uniform rules on the liability of operators of transport terminals. His delegation noted with interest the reports submitted by the Secretariat on co-ordination with other organizations and institutions in the field of international trade law, as well as the statements made by the Secretary-General of the Asian-African Legal Consultative Committee and the Under-Secretary-General of the Hague Conference on Private International Law. Lastly, it welcomed the work of UNCITRAL in the area of training and assistance.

38. Mr. AL-DUWAIKH (Kuwait) said his delegation hoped that UNCITRAL and its Working Group on International Negotiable Instruments would complete the work entrusted to them with respect to the draft Convention on International Bills of Exchange and International Promissory Notes, and would submit the final version of the draft Convention. He regretted that they had not been able to do so owing to the financial crisis of the United Nations. Moreover, the technical complexity of the draft Convention and the scores of matters still to be resolved on UNCITRAL's programme of work explained why the Commission had not been able to finish work on the draft Convention.
39. With regard to procedure, his delegation was of the opinion that UNCITRAL had rightly focused attention on controversial issues, deciding not to review all the articles in the draft Convention. It had also rightly appointed a drafting group to consider the decisions adopted by the Working Group.
40. It believed, however, that it was too early to consider a final procedure for the adoption of the draft as a convention, whether the convening of a diplomatic conference or adoption of the draft by the General Assembly on the recommendation of the Sixth Committee. In addition, the issues were not yet sufficiently clear to allow for a comparison between the draft Convention and the 1930 and 1931 Geneva Conventions.
41. His delegation continued to have doubts about the feasibility of the draft Convention, but was of the opinion that UNCITRAL had rightly decided that the Working Group should consider the draft Convention at its forthcoming meeting in January 1987. It had also rightly decided to expand the Working Group to include all members of UNCITRAL and, in addition, to invite other States to participate as observers in order to create a common language on all the items to be considered.
42. His delegation appealed to all States to submit their comments on the draft articles.
43. It welcomed the work carried out by the Working Group on the New International Economic Order, and expressed the hope that the Working Group would conclude its work on the legal guide on drawing up international contracts for the construction of industrial works at the following session. It thanked the Secretariat for the document it had submitted on that subject, although it believed it would have been preferable to have more time to refer to the subjects dealing with contracts for industrial co-operation, joint ventures, countertrade and procurement.
44. Mr. ABDEL RAHMAN (Sudan), referring to the procedure for adopting the draft Convention on International Bills of Exchange and International Promissory Notes as a convention, said that his delegation supported the convening of a diplomatic conference, which was the normal procedure for the adoption of a convention of universal character. Other conventions of universal character dealing with private law matters had been adopted by diplomatic conferences. A diplomatic conference would make it possible to bridge the gap between the different conceptual approaches. United Nations conferences were a universal forum, making it possible to reach a consensus. Moreover, the General Assembly was the only competent body

(Mr. Abdel Rahman, Sudan)

to decide on matters relating to expenditure. Therefore, it was not appropriate for UNCITRAL to assume that responsibility. The financial crisis of the United Nations should not be taken as a pretext to depart from established practice.

45. It was premature for the Commission to make a recommendation on how the General Assembly should adopt the draft Convention if the Commission itself was not sure whether the draft Convention was in its final form or not. In the opinion of his delegation, the proper recommendation would be to convene a diplomatic conference, because what mattered was an acceptable convention which could be implemented, not another instrument of international law that would be of interest to scholars. His delegation welcomed the work done by UNCITRAL on the other items on its agenda, particularly those related to the new international economic order. It likewise welcomed the relations established between UNCITRAL and other organizations, particularly the Asian-African Legal Consultative Committee.

46. Mr. KARTHA (Chairman of UNCITRAL) said that the views expressed by delegations would guide UNCITRAL in 1987 in deciding on the procedure to be followed once it completed its work on the draft Convention on International Bills of Exchange and International Promissory Notes.

47. UNCITRAL was aware that the procedure suggested for completing its work on the draft Convention was unprecedented, but it believed that its suggestion was justified by the technical nature of the draft Convention, the many years of careful consideration the draft Convention had received in the Working Group on International Negotiable Instruments and in the Commission itself, and the invitations which had been sent to all States to participate in deliberations of the Working Group and the Commission on that subject. In addition, the financial crisis of the United Nations was an important factor which had influenced the recommendation of UNCITRAL.

48. There were some differences of opinion in the Sixth Committee regarding the best procedure to be followed in the finalization of the draft Convention, but it was to be hoped that those differences would be resolved in the same spirit as in UNCITRAL.

49. He expressed the hope that all States would participate in the work of UNCITRAL, and urged all States to submit their comments on the draft Convention to the Secretary of the Commission so that the Working Group on International Negotiable Instruments could consider them in January. As indicated in the report of the Commission all States had been invited to send representatives or observers to the meeting of the Working Group and to the Commission's session in the summer of 1987 so that the draft Convention would receive the fullest consideration possible before its submission to the General Assembly.

50. He urged all States to consider ratification of, or accession to, the conventions already prepared by UNCITRAL, and to consider adoption of the UNCITRAL Model Law on International Commercial Arbitration.

51. The CHAIRMAN said that UNCITRAL had listened to the opinions of the delegations present in the Sixth Committee, and that the Commission therefore knew what to expect with regard to the draft resolution and to the twentieth session of UNCITRAL. In addition, he requested that the draft resolution on agenda item 127 should be submitted in due time, so that the delegations concerned would have the opportunity to hold consultations before its adoption.

The meeting rose at 12.10 p.m.