



SUMMARY RECORD OF THE 5th MEETING

Chairman: Mr. FRANCIS (Jamaica)

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The meeting was called to order at 10.40 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. VAN WUIFFTEN PALTHE (Netherlands) said that his delegation supported all measures to make the Committee's meetings more efficient and business-like and less rhetorical. In that regard, it supported the precedents set by the Committee's Chairman at the fortieth session of the General Assembly. It generally approved the UNCITRAL report and wished to elaborate on three specific topics.

2. With regard to the draft Convention on International Bills of Exchange and International Promissory Notes, his Government was satisfied at the progress made by the Committee of the Whole. Concerning the procedure for adopting the draft Convention as a convention (paras. 212-224 of the UNCITRAL report), his delegation agreed with the second option proposed in paragraph 213 whereby, prior to the twentieth session of UNCITRAL, the Working Group on International Negotiable Instruments would review the draft Convention finalized by UNCITRAL at its nineteenth session so that UNCITRAL could consider and approve it at its twentieth session. It hoped that the Committee would recommend to the General Assembly that it adopt the draft Convention without a review of the substance of the text and shared most of the concerns voiced against the procedure of convening a diplomatic conference.

3. With regard to the New International Economic Order (paras. 232-243), his delegation noted with satisfaction that UNCITRAL would probably complete the legal guide on drawing up international contracts for the construction of industrial works at its twentieth session in 1987. It supported UNCITRAL's decision to continue its work in the area of the New International Economic Order with a study on procurement.

4. With regard to the status of conventions (paras. 262-264), his Government noted with pleasure that the secretariat had expressed optimism that the United Nations Sales Convention would come into force within the next one or two years. At the depositary State of the 1964 Hague Convention on the International Sale of Goods, the Netherlands would not ratify the United Nations Convention within that period since it did not wish to precede the other States parties to the 1964 Convention, but, after consultation with the secretariat of UNCITRAL, was prepared to convene a meeting of those States parties in order to discuss what steps could be taken to adhere to the United Nations Convention.

5. Mr. EDWARDS (United Kingdom), referring to the draft Convention on International Bills of Exchange and International Promissory Notes, expressed his delegation's satisfaction that the draft was nearing completion. The United Kingdom looked forward to the finalization of a convention on the lines of the current draft. He particularly wished to mention the inclusion in the draft Convention of a provision regarding bills of exchange and international promissory notes with floating interest rates. Such a provision would reflect current

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practice in the sphere of international financing. The precise status of such notes was to some extent uncertain under current law and the banking and trading community in the United Kingdom would welcome a provision in the Convention which settled the matter. UNCITRAL had rightly rejected the argument that encouraging the use of floating rate notes might be disadvantageous to debtors. On the contrary, the inclusion of a provision enabling such instruments to circulate as negotiable instruments and promissory notes would tend to have the effect of reducing interest rates. Some concern had also been expressed that creditors might influence floating rates to their own advantage. The United Kingdom was pleased to note that, following careful work by the experts in UNCITRAL, provisions had been devised which guarded against that possibility. The draft Convention also now contained the safeguard that floating rate notes might include a provision setting a ceiling on the rate of interest. Retaining that provision would add to the likelihood of a new Convention becoming generally acceptable.

6. With regard to the procedure to be followed for adopting the draft as a convention, his delegation would prefer that UNCITRAL finalize the text at its twentieth session so that it could then be submitted to the General Assembly, through the Sixth Committee, with a recommendation that it be adopted and opened for signature. There were good reasons for not incurring the major expense involved in mounting a diplomatic conference. Finalization of the Convention depended on the settlement of some quite difficult technical points, which required the close attention of experts in the field of banking and finance, but there were no significant points of controversy that would justify the convening of a diplomatic conference.

7. With regard to the draft Convention on the Liability of Operators of Transport Terminals, UNCITRAL had been considering the possibility of broadening the scope of the Convention to cover a wide range of activities extending, on the one hand, to those who merely handled goods as sub-contractors and, on the other hand, to those who worked on the goods, such as processors. His delegation wondered whether it would be practicable to accommodate within one instrument provisions covering liability for such a wide range of different activities, and it was not yet convinced that there were real legal problems in that area for the solution of which a new convention was required. Practical work on the insurance implications of alternative solutions needed to be undertaken. Moreover, it might be advisable to retain sufficient flexibility to enable those who provided the relevant services to contract out of liability. UNCITRAL still needed to give considerable thought to that matter.

8. Regarding the New International Economic Order, his delegation was pleased to note that it might be possible to put the legal guide on drawing up international contracts for the construction of industrial works into its final form for adoption by the Commission in 1987. Concerning future work in the area of the New International Economic Order, UNCITRAL had decided at its nineteenth session that the Secretariat would undertake further work on three subjects: procurement, counter-trade and joint ventures, giving priority to the first two. The United Kingdom was concerned that the work on counter-trade might prove difficult. The

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experience of a group which was undertaking work on counter-trade in the Economic Commission for Europe showed the difficulty of elaborating legal rules in that field, where each case was unique. Work on counter-trade might be diverting UNCITRAL's resources from more profitable areas.

9. Electronic funds transfers was an area where there had been considerable technological development but where national laws had yet to become deeply entrenched. His delegation welcomed the work that UNCITRAL had undertaken in the last year, culminating in the adoption of its legal guide. It also welcomed the plan for UNCITRAL to provide the forum for collaboration by experts in preparing model legal rules. Lastly, his delegation welcomed UNCITRAL's decision to undertake work on the subject of automatic data processing and hoped that the developing countries would be able to participate fully in such work.

10. Mr. KAMAL (Bangladesh) said that Bangladesh had decided to adopt an open-door policy in the development of its financial and trade institutions, and had therefore participated for the first time, as an observer, in the deliberations of UNCITRAL at its nineteenth session. The work done by the Working Group on International Negotiable Instruments at its fourteenth session in connection with the draft Convention on International Bills of Exchange and International Promissory Notes was praiseworthy. The goal of achieving agreement on all the controversial articles at the next session of the Working Group and at the twentieth session of UNCITRAL seemed over-ambitious.

11. As for the procedure to be followed for the adoption of the draft Convention, his delegation wished to reserve its comments concerning the choice made by UNCITRAL. In his delegation's view, there was a clear need to give careful consideration to the proposal made by UNCITRAL in paragraph 224 of its report, for the sake of safeguarding the democratic rights and legitimate interests of the parties that were unable to attend UNCITRAL's sessions. For reasons both of substance and of procedure, the General Assembly and the Sixth Committee could not shirk their responsibility to review the work done by a smaller group.

12. His delegation welcomed the completion of the Legal Guide on Electronic Funds Transfers and hoped that it would facilitate the formulation of appropriate national legislation on a uniform basis. His delegation recognized the importance of UNCITRAL's work on the New International Economic Order and appreciated the work accomplished by the secretariat and the relevant Working Group in connection with the consideration of the draft chapters of the legal guide on drawing up international contracts for the construction of industrial works.

13. Finally, his delegation emphasized the importance of holding international trade law seminars for the lawyers and officials of the developing countries, and expressed its gratitude to the countries and bodies that had responded to the request made by the General Assembly in its resolution 40/71 of 11 December 1985.

14. Mr. DIMISHIDTIS (Cyprus) said that his delegation welcomed the report of the United Nations Commission on International Trade Law on the work of its nineteenth session. Referring to the draft Convention on International Bills of Exchange and International Promissory Notes, he said that UNCITRAL and its Working Group on International Negotiable Instruments had achieved a great triumph in their efforts to harmonize the law in that area. Unfortunately, UNCITRAL had been unable to complete consideration of the entire draft Convention. As to the procedure for the adoption of the draft as a Convention, his delegation felt that under present conditions of austerity, UNCITRAL had been right to support the second of the procedures described in paragraph 213 of its report, in view of the desirability but costliness of a diplomatic conference.

15. His delegation hoped that the draft Convention, after being considered by the Working Group on International Negotiable Instruments before the twentieth session of UNCITRAL, and after its subsequent consideration and approval by UNCITRAL at that session, would be recommended by the Sixth Committee to the General Assembly for adoption without consideration of the substantive elements of the text. That procedure should not constitute a precedent for the future.

16. His delegation welcomed the completion of the Legal Guide on Electronic Funds Transfers, which was an excellent beginning for the work to be done in that area.

17. His delegation commended UNCITRAL and the Working Group on the New International Economic Order for their work on that topic, which was of great importance for the developing countries. It was particularly encouraging that the legal guide on drawing up international contracts for the construction of industrial works was nearly completed.

18. As for future work in the area of the New International Economic Order, UNCITRAL had been right to choose topics relating to joint ventures, countertrade and procurement, giving priority to the latter. UNCITRAL was also making an important contribution in co-ordinating work in the area of international trade law. His delegation wished to note in particular the satisfactory co-operation which existed between UNCITRAL and the Asian-African Legal Consultative Committee, of which Cyprus was a member. Finally, his delegation supported the agreement that symposia and seminars on international trade law should continue to be sponsored and was grateful to the Governments and bodies which had organized symposia and seminars in 1985 and 1986.

19. Mr. LINDHOLM (Sweden), speaking on behalf of the delegations of Denmark, Finland, Iceland, Norway and his own country, said that on previous occasions they had stressed the importance of finalizing the draft Convention on International Bills of Exchange and International Promissory Notes. They therefore agreed with the procedure for its adoption proposed by UNCITRAL. The convening of a diplomatic conference to adopt it not only would delay its entry into force, but also would entail unnecessary costs for the Organization.

20. As for electronic funds transfers, they felt that the Legal Guide to be published by the Secretariat would be very useful, and looked forward to the continuation of work in that field with a view to the preparation of a model law.

(Mr. Lindholm, Sweden)

21. The delegations of the Nordic countries also attached great importance to the work of the Working Group on the New International Economic Order on the legal guide on drawing up international contracts for the construction of industrial works. That subject was of genuine and practical interest to both developed and developing countries.

22. Lastly, the Nordic countries welcomed the progress being made towards ratification of the United Nations Sales Convention; they would ratify it in the near future.

23. Mr. TREVES (Italy), referring to the draft Convention on International Bills of Exchange and International Promissory Notes, said that his delegation had in previous discussions expressed some scepticism concerning the real need for such a Convention, whose purpose was not to simplify international trade by replacing existing instruments and principles with new and more modern ones, but to add a new instrument to those that already existed. However, he realized that the fact that the Convention was applicable only to bills of exchange or international promissory notes that made explicit reference to it, and not to all bills or promissory notes, made it possible to view the draft in a more favourable light. Of course it was an important experiment in harmonising concepts prevailing in the major legal systems of the world.

24. Italy, however, was not fully satisfied with the text as it stood. First of all, in general, various provisions afforded less protection than would have been desirable for the circulation of bills of exchange or promissory notes. In some cases, such protection was even less than provided for under the Geneva Conventions. Secondly, another general difficulty concerned the drafting style of the Convention, which, in his delegation's view, would create problems if it were to be applied by the courts in "civil law" countries. In particular, the constant cross-references between provisions made the text difficult to read and created the risk of contradictions and difficulties in interpretation.

25. Specifically, his country had doubts as to the usefulness of the reference, contained in article 3 of the draft, to the observance of good faith in international transactions as an element to be taken into account in interpreting the Convention. If that were adopted as the criterion - rather than the principle of the behaviour of the parties to the transaction - it might encourage a flexibility of interpretation that did not seem fully compatible with the principles of certainty and formality that should characterize the law of bills of exchange. His delegation still had difficulties with the definitions of "holder" and "protected holder", and with the "acceleration clause" in article 6 (c).

26. Italy agreed with UNCITRAL's proposal concerning the procedure for adopting the Convention. A diplomatic conference would be more in keeping with established precedents and would achieve the objective of ensuring direct participation by all States, through their authorized representatives, in a final article-by-article consideration of the text. However, the current financial situation of the United Nations and the relatively minor importance of the draft compared to others adopted

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(Mr. Treves, Italy)

by UNCITRAL, fully justified the procedure proposed. Under that procedure, the text would be submitted to Governments for their observations, and, in the light of those observations, would be examined in an enlarged Working Group, open to the participation as observers of all States Members of the United Nations, with a view to the adoption of the Convention at the forty-second session of the General Assembly.

27. For States which, like Italy, were parties to the Geneva Convention, the latest Convention also presented the problem of ensuring that the obligations deriving from the two instruments were compatible. That objective could perhaps be attained through interpretation of the Geneva Convention, but, if a specific agreement between the parties to the Geneva Convention, or a specific clause in the UNCITRAL Convention, was necessary, it would be appropriate to consider the question individually or collectively then.

28. It was unfortunate that postponement of the conclusion of the work on the draft Convention on International Bills of Exchange and International Promissory Notes had forced the Working Group on International Negotiable Instruments to postpone its work on model legal rules in the area of electronic funds transfers. The time was ripe for the elaboration of model rules that would provide uniform guidelines for the vast majority of States which had not yet adopted laws on the question of electronic funds transfers.

29. His delegation was pleased that work would soon be completed on the legal guide on drawing up international contracts for the construction of industrial works, and hoped that the guide would be adopted in 1987. To achieve that goal, the Working Group on the New International Economic Order would have to meet for four weeks and the topic would have to be allotted sufficient time at the Commission's twentieth session. Otherwise, it would be preferable to postpone adoption of the guide until 1988.

30. The work accomplished on the topic of the liability of operators of transport terminals reflected the successful outcome of co-operation between UNCITRAL and the International Institute for the Unification of Private Law (UNIDROIT), which had prepared the basic draft under consideration.

31. On the subject of co-operation with other bodies, he said that the Hague Conference on Private International Law was to be congratulated on the adoption of the 1985 Hague Convention on the Law Applicable to the International Sale of Goods. The main objective of that Convention was to harmonize conflict rules with the needs arising from the United Nations Convention on Contracts for the International Sale of Goods, adopted in 1980. Italy was fulfilling the final requirements for ratification of that Convention, parliamentary procedures having already been completed.

32. Despite the current financial difficulties, UNCITRAL should be given the resources it needed to continue its work, which was of great importance to the development of international trade and, indirectly, to the well-being of all peoples.

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ELECTION OF THE RAPPORTEUR

33. Mr. MAKEKA (Lesotho) nominated Mr. José María Castroviejo (Spain) for the office of Rapporteur and gave a brief account of his professional background.
34. The CHAIRMAN said that since there were no other candidates, he would take it that the Committee wished to elect Mr. Castroviejo (Spain) Rapporteur.
35. Mr. Castroviejo (Spain) was elected Rapporteur by acclamation.

ORGANIZATION OF WORK

36. The CHAIRMAN announced that consultations on organization of work and related items had come to a satisfactory conclusion, and that agreement had been reached on a timetable for the current session. In the preparation of the timetable, due account had been taken of the request of the Asian-African Legal Consultative Committee to hold a one-day colloquium towards the end of the week of 6 to 10 October on the International Court of Justice, to be chaired by the President of the Court.

37. In informal consultations, it had been agreed that the timetable, which would be circulated to delegations in an official document, would be followed with as much flexibility as necessary.

38. At the proper time, informal consultations would be held on the best way to consider items 130 and 125 and the procedural aspects of item 129.

39. On the basis of informal consultations, he would suggest re-establishing the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and reappointing Mr. Treves (Italy) as Chairman. He would also suggest re-establishing the Sub-Committee on Good-Neighbourliness under the chairmanship of Mr. Voicu (Romania), on the understanding that every effort possible would be made to allot the Working Group and the Sub-Committee as many meetings as they needed to fulfil their mandate adequately.

40. It was so decided.

41. After an exchange of views on the timetable in which Mr. ROSENSTOCK (United States of America), Mr. ABDEL KHALEK (Egypt), Mr. LUKYANOVICH (Union of Soviet Socialist Republics), Mr. CALERO RODRIGUES (Brazil), Mr. SCHRICKE (France), Mr. ROMPANI (Uruguay), Mr. VOICU (Romania) and Mr. TREVES (Italy) participated, the CHAIRMAN noted that, as always, flexibility and a spirit of understanding were the hallmark of the Sixth Committee. The current timetable was merely a guide and could, if necessary, be modified in order to make the most of the time available and ensure that proceedings were conducted in an orderly and effective manner, and with the flexibility called for in paragraph 5 of document A/41/250/Add.1. The General Assembly had approved the recommendations of the General Committee to waive, at the current session, the requirement of the presence of at least one

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quarter of the members to declare a meeting of a Main Committee open, and permit the debate to proceed, on the understanding that the presence of a majority of the members would be required for any decision to be taken (A/41/250/Add.1, para. 8). Drawing attention to rules 106 and 114 of the rules of procedure of the General Assembly, he said that he intended to begin meetings promptly at 10.30 a.m. or 3 p.m., and to open and close the list of speakers on each item as early as possible. He also drew attention to the relevant decisions of the General Assembly on explanations of vote and rights of reply, and to the deadline of 1 December for the submission to the Fifth Committee of all draft resolutions with financial implications, subject to final establishment of a closing date of the session. Lastly, he requested the co-operation of all delegations in submitting draft resolutions as early as possible.

The meeting rose at 12.25 p.m.