



**SUMMARY RECORD OF THE 5th MEETING**

**Chairman: Mr. AZZAROUK (Libyan Arab Jamahiriya)**

**later: Mr. SCHARIOTH (Federal Republic of Germany)**

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**AGENDA ITEM 132: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW  
ON THE WORK OF ITS TWENTIETH SESSION (cont.)**

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

AGENDA ITEM 132: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTIETH SESSION (continued) (A/42/17)

1. Mr. BUDAI (Hungary) said that UNCITRAL had successfully completed the work entrusted to it and once again proved its competence and its desire to contribute to the establishment and strengthening of legal order and security in the field of international trade and commercial relations. Hungary attached paramount importance to international trade and wished to develop mutually beneficial commercial relations with other countries. It was therefore concerned about the growth of protectionism and discriminatory practices and other restrictions which impeded the expansion of those relations.
2. Hungary, which had supported from the very beginning the concept of unification in the field of international bills of exchange and international promissory notes, and particularly the elaboration of a new legal instrument, welcomed the draft Convention and was gratified that UNCITRAL had completed and adopted the legal guide on drawing up international contracts for construction of industrial works.
3. His delegation fully endorsed the idea of elaborating Model Rules on electronic funds transfers because that area was essentially unregulated. It suggested that UNCITRAL should first define the exact subject of regulation and then proceed with the actual drafting effort.
4. The Committee should do everything possible to encourage UNCITRAL to follow the path it found most appropriate.
5. Mr. EDWARDS (United Kingdom) said that the draft Convention had the potential to represent an advance over existing laws affecting the circulation of negotiable instruments because it represented a compromise between common law and civil law systems, and offered the possibility of establishing a new legal order.
6. With regard to bills of exchange or promissory notes bearing a variable rate of interest, he was pleased that article 9, paragraph 6 of the draft Convention had again received the attention of the experts. The draft Convention accommodated floating rate notes while safeguarding debtors against changes in interest rates.
7. As to the course of action to be followed for the adoption of the draft Convention, his delegation believed that there was no justification for convening a diplomatic conference; in any event there was no available source of funds. It suggested that the General Assembly should adopt the draft Convention and open it for signature.
8. His delegation hoped that the Legal Guide, would be useful for developing countries carrying out construction works. With regard to the meeting of the working group of experts on procurement in October 1988, he suggested that UNCITRAL

(Mr. Edwards, United Kingdom)

should take note of the work already done by GATT in that area and avoid any overlap.

9. On the subject of the preparation of Model Rules on electronic funds transfers, he expressed the hope that with the involvement of UNCITRAL, it would be possible to develop the law on a uniform basis and resolve all the problems restricting the development of the use of electronic means for the international transfer of funds.

10. Lastly, his delegation believed that the twenty-first session of the Commission should be thoroughly prepared well in advance. It was prepared to co-operate in establishing UNCITRAL's priorities and drawing up a programme of work for the years 1990-1995.

11. Mr. TREVES (Italy) said that, while the Legal Guide would certainly be non-controversial, the draft Convention on International Bills of Exchange and International Promissory Notes had been submitted to the Committee "with a view to its adoption or any other action to be taken" and a solution must therefore be found to the problem of its adoption.

12. His delegation was not fully satisfied with the basic outlook of the text and some of its articles. The possibilities within UNCITRAL had been exhausted; Italy welcomed the decision to have a meeting of the Working Group on International Payments in November to consider the preparation of Model Rules on electronic funds transfers. The solution of holding a diplomatic conference had been recognized as being most consonant with UNCITRAL's tradition and most appropriate in view of the importance of the matter. However, serious consideration should be given to the possibility of overcoming the problem of costs, for example, by transforming the Committee into a diplomatic conference at the forty-third session of the General Assembly. All Member States would thus have a precise deadline for elaborating instructions for their representatives and devising compromise solutions which would make it possible to have a Convention likely to be accepted by a wider group of States.

13. Regardless of the decisions eventually made by States as to their becoming parties to the Convention, that solution would be in the general interest in that negotiable instruments created under the Convention could circulate among nationals of States which were not parties to the Convention. It was therefore necessary for those States and States parties to the Convention to be able to make the necessary changes so as to obtain wider and easier circulation of international bills of exchange and promissory notes.

14. The draft Legal Guide would render real service to the world business community, particularly in developing countries, by identifying the problems that might be encountered and the solution that might be envisaged in drawing up the most important contracts in the field of investment and development.

15. With regard to the work carried out by UNCITRAL, its central co-ordinating role and the way it had been able to use the experience accumulated within the

(Mr. Treves, Italy)

organization to the benefit of everyone concerned must first be recognized. Initially it might seem that UNCITRAL's achievements were not impressive, since none of the three conventions or the protocol it had drawn up had yet entered into force; that impression was wrong, however, because, for example, the United Nations Convention on Contracts for the International Sale of Goods of 1980 would enter into force on 1 January 1988. Nor was it possible to deny the influence on the legal practice and legislative policies of States of various other documents drawn up by UNCITRAL.

16. As to UNCITRAL's future work, his delegation welcomed the priority UNCITRAL planned to give to training and assistance, and the promotion of the adoption and use of the texts it had produced. However, that should in no way prejudice the traditional activities of preparing new texts, which should remain the main task of the secretariat. In that respect, a discussion on working methods and the membership of UNCITRAL and its working groups could be useful because, ultimately, the quality of UNCITRAL's results and its reputation depended to a considerable extent on its organization and mode of operation. In that respect, he believed that the existing composition and mode of operation of UNCITRAL should be maintained with the flexibility acquired over the years in respect of the participation of observers and the representation of all members in working groups.

17. Mr. WOOLCOTT (Australia) said that all States agreed on the value of the work accomplished by UNCITRAL and that it was Australia's hope that it would continue to operate successfully in the future. However, that would require publicizing its work by promoting it as widely as possible. The outcome of the twentieth session had been especially gratifying.

18. As to its future work, UNCITRAL was scheduled to review its programme of work, and Australia hoped that it would give greater priority to training and to the promotion of the texts it elaborated in order to encourage their adoption and use.

19. That did not mean that the development of new legal texts and instruments should become a secondary objective. UNCITRAL should, indeed, continue to consider the questions of the uniform rules on the liability of operators of transport terminals, the legal implications of automatic data processing and the Model Rules on electronic funds transfers. Australia was prepared to co-operate with the Commission in that work.

20. Mr. Scharioth (Federal Republic of Germany) took the Chair.

21. Mr. SCHRICKE (France) said that his delegation was impressed by the quality of the draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works, which UNCITRAL had just adopted, and which would be very useful to persons involved in drawing up such contracts, particularly in the developing countries. Its use should be recommended and steps should be taken to ensure that it was publicized. The draft Legal Guide was a good example of the practical contributions UNCITRAL could make to the development of international trade between what were commonly known as North and South. His delegation attached particular

(Mr. Schricke, France)

importance, among the various UNCITRAL texts, to those dealing with the electronic transfer of funds, a question whose importance was becoming increasingly obvious because of the rapidly expanding use of computers in international payments. France also noted with satisfaction that UNCITRAL was continuing to co-operate fruitfully with other organizations engaged in related fields of activity and was continuing to provide training and assistance in its field of competence.

22. The part of the UNCITRAL report devoted to its future work highlighted the difficulties caused by the many vacant posts in its secretariat. The usefulness of the work assigned to UNCITRAL and the quality of the work it had completed justified giving priority to the recruitment of qualified staff to fill the vacant posts, while taking care to ensure that the secretariat fairly represented the differing legal traditions. A balance between the major legal systems dividing the world was one of the indispensable conditions for UNCITRAL's success, and too much could not be made of the grave consequences for UNCITRAL if the excellent balance it had thus far managed to maintain were to be jeopardized.

23. In that connection, his delegation had serious concerns regarding the draft Convention on International Bills of Exchange and International Promissory Notes adopted by UNCITRAL at its most recent session. Even though the draft represented the culmination of 16 years of in-depth work, during which an effort had been made to reconcile the existing legal conceptions, and even though improvements had been made in the text during the past year, the draft remained not only unbalanced to the detriment of the views prevailing in the so-called civil law countries, but also seriously flawed in its treatment of certain questions. Such flaws, however, would not lead his delegation to oppose the adoption of the Convention if its effects were limited to the States parties. Although France, despite its reservations, had not objected to the adoption of the draft Convention by consensus, it would not be able to remain indifferent to a draft text which, as it stood, would have the effect of placing States which did not wish to accede to it at a disadvantage.

24. At issue was not only the incompatibility between the draft Convention and the legal system in effect in the 20 countries which were party to the Geneva Conventions of 1930 and in the Latin American countries bound by the Inter-American Convention on Conflict of Laws Concerning Bills of Exchange, Promissory Notes and Invoices. If such a new system entered into force, it would cause an upheaval in the banking practices of such countries and create considerable difficulties in the relations between the countries which were party to the "Geneva system" and the Inter-American Convention, on the one hand, and those which would become party to the new Convention. Still more open to criticism, however, seemed to be the provisions giving the Convention an unprecedented extra-territorial effect: the result of the combined provisions of draft articles 2 and 4, would be to bring promissory notes and bills of exchange under the régime established by the Convention even in cases where the places specified on such negotiable instruments were not situated in Contracting States. The draft Convention thereby sought to remove those negotiable instruments from the legal order normally applicable ratione loci and to bring them under a régime which would not have been accepted by

(Mr. Schricke, France)

the States in which those places were situated. What made that exorbitant requirement even more inadmissible was the provision in article 2, paragraph 3, that even proof that indications specified on promissory notes and bills of exchange were incorrect did not affect the application of the Convention.

25. To be sure, article 89 allowed for a reservation aimed at limiting the Convention's application in cases where the place of either issuance or endorsement, on the one hand, and the place of payment on the other hand, were both situated in the territory of Contracting States. Such a provision was obviously of no help to non-Contracting States. The article simply allowed a Contracting State to renounce partially or unilaterally the extra-territorial effect of the Convention. The precedent thus established would therefore be very serious, because it would violate a fundamental principle of international law limiting the competence of a State to its own territory. His delegation drew the attention of all Member States to that issue, which went beyond the framework of the draft Convention and could not be reduced to a dispute between the proponents of common law and those of civil law.

26. Under the circumstances, France could not accept the adoption by the General Assembly of the draft Convention as it stood, as some were proposing. Such a possibility was out of the question at the current session, because over 100 States which had not taken part in the work of UNCITRAL had been apprised of the final text of the draft only in a report which had been issued merely a few days earlier. His delegation believed that the draft Convention should be submitted to a diplomatic conference in accordance with the usual practice. That way of proceeding would have the advantage of allowing the presence of experts, without whom it would be hard to imagine that a text dealing with such a technical matter could be given serious consideration. Such a conference would obviously not be convened to reopen discussion on the draft text as a whole, because on a great many points there was no reason to challenge the outcome of many years of work. Instead, it should focus on the few questions for which generally satisfactory solutions had not been found, and work out compromises that would permit the text to attract broad support. It would seem, then, that the conference could be shorter than usual, bringing down the cost. It should be possible to overcome the outstanding difficulties on very specific points. One could expect that the spirit of dialogue would again prevail and that the draft Convention would be an occasion not of sowing discord but of bridging the gap between countries with different political, social, economic and legal horizons, as had happened, for example, with the United Nations Convention on Contracts for the International Sale of Goods, due to enter into force on 1 January 1988.

27. Mr. SOKOLOVSKY (Byelorussian Soviet Socialist Republic) said that current circumstances made mandatory a reduction in the debt burden of developing countries and the granting to those countries of additional resources to help them develop, as the States parties to the Warsaw Treaty had noted during a meeting held in May 1987 at Berlin (A/42/354). However, those goals could be achieved only if a new international economic order was established and the economic security of every State was guaranteed within the framework of a comprehensive system of international

(Mr. Sokolovsky, Byelorussian SSR)

security. UNCITRAL had an important role to play in that regard. His delegation noted with satisfaction that the report of UNCITRAL showed that the Commission had been quite productive during its most recent session. In the light of comments submitted by States and international organizations, UNCITRAL had again discussed the draft Convention on International Bills of Exchange and International Promissory Notes and had elaborated a set of articles while retaining the principal provisions on which agreement had been reached at previous sessions. He cited various provisions which had been the subject of clarifications during the twentieth session, particularly those contained in articles 37, 43, 50 and 57, and added that the draft, which was the product of 14 years' work, contained balanced legal provisions that reflected current practice. In view of the issues dealt with in that document, his delegation believed that the appropriate form for it was that of a convention which, when adopted, might have a considerable influence on the unification of the norms of negotiable instruments law.

28. The question then arose as to how the draft ought to be adopted as the text of the Convention. The draft Convention fulfilled the requirements of current international practice regarding international payments, and his delegation was in favour of adopting it during the current session of the General Assembly, after which the Convention would be open for signature; that would avoid any expenditures in connection with the holding of a diplomatic conference, a consideration which was not without importance, in view of the financial crisis the Organization was experiencing. His delegation would not, however, oppose the idea of following up other proposals.

29. Concerning other achievements of the twentieth session of UNCITRAL, his delegation welcomed the adoption of the draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works and endorsed the Commission's intention to pursue its work in the area of the establishment of a new international economic order, particularly with regard to international procurement

30. Mr. KANDIE (Kenya), referring to the recommendation contained in paragraph 304 of the report (A/42/17), said his delegation was in favour of adopting the Convention without resorting to a diplomatic conference, a choice which was unrelated to the issue of the expense such a conference might entail. Rather, Kenya was convinced that the Convention had reached the point of widest possible acceptance and that any attempt to tamper with that balance might be counter-productive.

31. In adopting the draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works, UNCITRAL had reached yet another milestone in the development of the new international economic order. The draft Guide, which struck a balance between the interests of purchasers and those of contractors, would be of great practical value to interested parties in government and industrial circles and filled a void which had existed in that branch of international trade law.

(Mr. Kandie, Kenya)

32. His delegation noted with satisfaction that the secretariat had made progress in its preparations relating to the question of international procurement and that the Commission was promoting the development of legislation covering electronic funds transfers. With regard to the status of conventions, the Kenyan Government was in the process of ratifying or acceding to the various conventions drafted under the auspices of UNCITRAL.

33. His delegation noted with regret that there had been a dropping off of training and assistance activities, largely because of a lack of funds. He expressed gratitude to those delegations that had indicated their readiness to contribute by providing expert services or by hosting training courses or seminars.

34. Mr. HOPPE (German Democratic Republic) welcomed the fact that UNCITRAL had been able at its twentieth session to conclude its work on the Draft Convention on International Bills of Exchange and International Promissory Notes. The draft constituted an acceptable compromise between the principles of the Geneva Uniform Law and those of Anglo-American law; it would promote the unification of law and would provide a model for those countries which did not yet have any legislation in that area. However, the procedure to be followed in adopting the draft and signing the Convention had yet to be determined. In that regard, his delegation believed that the unification of international trade law played an important role in the development of international economic relations, but could be effective only if a large number of countries acceded to the conventions. As only a small number of countries had participated in the preparation of the draft in UNCITRAL, it would be advisable to convene a diplomatic conference for the adoption of the Convention: in that way, States that had not participated in the drafting would have an opportunity to raise questions and submit proposals in a more appropriate setting than the General Assembly, which already had a very full agenda. His delegation was convinced that the holding of a diplomatic conference would allow the Convention to be signed and ratified by many countries. However, if the majority of delegations preferred to submit the draft convention to the General Assembly for adoption, his delegation was prepared to agree, in view of financial constraints.

35. The Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works, adopted by the Commission at its most recent session, dealt with all the essential questions that might arise during the preparation and implementation of industrial works projects. The Guide dealt in a balanced manner with the interests of both contractors and purchasers, and would be valuable for all those involved in the drawing up of such contracts, particularly in the developing countries. It thus constituted a remarkable contribution to the establishment of a new international economic order.

36. Mr. CALERO RODRIGUES (Brazil) said he welcomed the fact that the United Nations Convention on the Contracts for the International Sale of Goods had received the required number of ratifications in UNCITRAL's twentieth year of existence, and would enter into force on 1 January 1988. That Convention was one of many instruments to result from UNCITRAL's work, which had always been characterized by a high level of professional competence.



(Mr. Calero Rodrigues, Brazil)

37. Most of the twentieth session of UNCITRAL had been devoted to finalizing the draft Convention on International Bills of Exchange and International Promissory Notes. That exercise had focused on the search for a compromise between the two major categories of regulations governing the negotiable instruments in question, those deriving from common law and those based on civil law. By assimilating the essence of those two major legal systems, the draft convention must offer a better, if only an optional, régime, and not enter into competition with preceding régimes. From the Brazilian delegation's point of view a revision of the 1930 Geneva Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes, some aspects of which were admittedly outdated, would be preferable to the drafting of a new Convention.

38. While the spirit of compromise had prevailed during UNCITRAL's discussions, they had become increasingly difficult as they had narrowed down to more specific and controversial points. In its current form, the draft Convention fell short of striking the balance which would make it truly acceptable to his delegation: it still leaned significantly towards the common law system and, moreover, contained some defects in form and substance. With regard to form, the draft suffered from an excessive use of qualifications and cross-references which made interpretation and application of its 91 articles difficult. With regard to substance, the draft contained certain concepts and formulations such as "reasonable knowledge" which derived more from practices established under the common law system and which lacked the necessary objectivity and formality. In addition, the draft gave the holder of an instrument less protection than that which he enjoyed under the Geneva Convention.

39. With regard to the procedure to be followed for adopting the draft as a Convention, his delegation believed that it would be inappropriate to act in haste merely because UNCITRAL had been working on the draft for a long time. The very importance of the text and the amount of work it had required would justify making the necessary effort to ensure its universality. A considerable number of other delegations still entertained doubts on certain provisions, and it would be unwise to adopt the text without giving those delegations a chance to re-examine it. That would have to be done, however, within the framework of clear and specific guidelines, since the intention was certainly not to re-open the discussion on the entire text, many of whose points were well balanced and in no need of revision. The Brazilian delegation was open to any idea which might be put forward in that respect.

40. His delegation wished to congratulate UNCITRAL on the completion of its work on the draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works. The harmonization and unification of contractual provisions commonly found in international contracts of that type was, of course, of special interest to developing countries for whom joint ventures and other types of associations with enterprises from developed countries had become an important component of their industrial development policies. The Legal Guide had been successful in identifying the legal issues raised in such contracts and would be of the greatest practical assistance. Provision must certainly be made for its widest possible dissemination.

(Mr. Calero Rodrigues, Brazil)

41. The gradual approach taken by UNCITRAL towards building a new international economic order would do much to allay the fears and resistance that were apparent with respect to the changes in the international economic order, to which the developing countries aspired. Contracts for industrial works were only one aspect of industrial development, and the Brazilian delegation was convinced that work must proceed in other fields. For that reason, it welcomed UNCITRAL's decision to take up the subject of procurement, which, in fact, flowed directly from the work on the Legal Guide.

42. It would be useful, now that the Commission had entered its twentieth year of existence, to undertake a general consideration of possibilities for future work and of specific topics which it could study. The Medium-Term Plan for 1990-1995, although it was oriented mainly toward the activities of the secretariat presented an opportunity to discuss priorities of the work of UNCITRAL, which could give careful consideration to such proposals at its twenty-first session.

43. In conclusion, noting that the UNCITRAL secretariat was suffering the consequences of understaffing due to the large number of vacant posts, he said that the Secretary-General must make every effort, as early as possible, to replenish the UNCITRAL staff which had to undertake extensive research and prepare all of the material on which delegates based their deliberations. Such work was of a highly technical nature and required extreme thoroughness. The secretariat could not fully discharge its duties if its members were burdened by an excessive workload.

44. Mrs. VOLOCHINSKY (Chile) said that the draft Convention on International Bills of Exchange and International Promissory Notes did not seem to give preference to any system, and established the healthy balance which was the necessary condition for the success of the future Convention. The consensus method had made it possible to arrive at a text which was acceptable despite the difficulties of application and interpretation that would be certain to arise. Regarding the adoption of the text, Chile was, as it had already stated, in favour of the General Assembly convening a diplomatic conference which, *inter alia*, might help to solve the problem posed by the incompatibility between some of the obligations set forth in the draft and those deriving from the instruments in force.

45. Her delegation was satisfied with the results of UNCITRAL's work on the draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works. The new instrument would be a valuable tool for all parties to that type of contract.

46. With regard to the inclusion in the UNCITRAL agenda of the topic of legal implications of the new international economic order, the fears expressed initially that the work might be politicized had proved to be unfounded, and UNCITRAL had been able to preserve the technical nature of its discussions.

47. Mr. QADER (Bangladesh) said that Bangladesh did not doubt the high quality of the draft Convention on International Bills of Exchange and International Promissory Notes, which was a blend of compromise formulas borrowed from all the major legal systems. However, at UNCITRAL's twentieth session, the French

(Mr. Qader, Bangladesh)

delegation had expressed concern over considerations of substance described in paragraph 305 of the report (A/42/17). The issue of compatibility between the draft and the Conventions in force on the same topics required more in-depth work and an effort to reach a broader consensus.

48. Considering the merit of the existing text and the financial difficulties of the United Nations, his delegation would not be averse to the adoption of the draft Convention without holding a diplomatic conference should a consensus to that effect emerge in the Sixth Committee. It believed, however, that in view of the complexity and technicality of the subject, the fact that most Member States of the United Nations had not been able to participate directly in the formulation of the draft, and the fact that the UNCITRAL report itself had been distributed very late, it would be reasonable to defer the adoption of the draft to a future session of the General Assembly. Moreover, just because countries had been invited to participate in the meetings or make suggestions, it could not be concluded that the result of the work was acceptable to all countries as if they had actually participated in the drafting. Experience showed that only actual participation by a country could guarantee that the suggestions it made would receive due attention.

49. His delegation felt that the draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works was satisfying and useful; it would recommend that the Guide should be widely distributed. His delegation was also looking forward to the Commission's work on international procurement in the framework of its consideration of the legal implications of the new international economic order. Lastly, his delegation commended the Commission for drawing up such an instrument as the United Nations Convention on Contracts for the International Sale of Goods, which would come into force on 1 January 1988.

50. Mr. BYKOV (Union of Soviet Socialist Republics) noted with satisfaction that the Commission, at its twentieth session, had completed the draft Convention on International Bills of Exchange and International Promissory Notes. Despite the diversity of views, the work had moved forward by consensus, and the draft was thus a wise compromise which seemed to correspond to contemporary practice. The Soviet Union supported the text of the draft and approved the recommendation to the General Assembly to adopt the document as a Convention and to open it for signature. Such a decision would be justified and rational in view of the financial implications. However, his delegation was prepared to consider any other idea about the procedure to be followed with a view to the signing of the Convention.

51. The draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works, which had been adopted by the Commission at its twentieth session, would be of great practical use to all countries. The Soviet Union was prepared to support the Commission's recommendation to disseminate the guide, within the limits, however, of available resources.

52. Despite the many other positive achievements of the twentieth session, much remained for the Commission to do in the field of international trade among all

(Mr. Bykov, USSR)

States irrespective of their economic systems. It would be appropriate at the current stage to have an exchange of views on the Commission's future work and to consider its course of action, as was noted in paragraph 339 of the report (A/42/17). His delegation had listened with interest to the views expressed on that point by other delegations.

53. The interdependence, primacy and universal value of international law were the basic elements of contemporary international trade relations. In that context, he drew attention to the document published by the 1987 Conference of States Members of the Warsaw Treaty, which included, inter alia, a proposed plan of action which would help alleviate indebtedness and promote a better balance of international trade and economic relations.

54. With regard to the inclusion of the legal implications of the new international economic order in the Commission's agenda, his delegation noted that the Commission had the means to make a useful contribution in that field and to advance international trade law towards greater fairness. He expressed the hope that the Commission would draw up instruments to that end with the valuable assistance of the secretariat services. Such a step would require a positive attitude and the renunciation of old stereotypes.

55. Mr. MIKULKA (Czechoslovakia) said that the completion of the work on the draft Convention on International Bills of Exchange and International Promissory Notes was the result of the fullest co-operation between the Commission, the world experts on the subject under consideration and the observer delegations whose active participation had been widely accepted. The text had thus achieved a coherent and balanced integration of ideas and procedures from the two main legal systems as they applied to negotiable instruments. The Commission's decision, as stated in paragraph 304 of the report (A/42/17), to submit the draft Convention to the General Assembly with a view to its adoption or any other action to be taken, was fully justified. It also showed consideration for the General Assembly prerogatives, by letting it choose between adopting the draft as submitted, without further detailed consideration, and convening a diplomatic conference.

56. The draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works, also adopted by the Commission, showed that the Commission had found a practical way of helping promote the objectives set forth in the General Assembly resolutions concerning economic development and the establishment of a new international economic order. The draft took into account in an equitable and balanced way the interests of both the contractor and the purchaser. His delegation fully supported the Commission's recommendation that the Legal Guide should be distributed to persons involved in drawing up international contracts for the construction of industrial works, especially in the developing countries.

57. His delegation noted the progress made by the Working Group on International Contract Practices in its study of the liability of operators of transport terminals. It also noted with satisfaction the progress of the secretariat's

(Mr. Mikulka, Czechoslovakia)

preparatory work on the topic of international procurement and the accomplishments of the meeting hosted by the secretariat on the legal implications of automatic data processing.

58. With regard to the status of conventions, his delegation announced that the process of ratification by his country of the United Nations Convention on Contracts for the International Sale of Goods was underway and that Czechoslovakia would soon join the other States parties to that instrument. In respect of the Commission's Medium-Term Plan for 1990-1995, his delegation hoped, as it had already indicated, that the work would focus on the consideration of international trade questions concerning inter-State relations and would also contribute to the progressive development of the principles of non-discrimination, co-operation and mutual advantages in those relations. An important place should still be reserved for legal international trade questions related to the new international economic order, such as scientific and technical co-operation, industrial co-operation, counter-trade etc., included in the long-term programme of work adopted by the Commission in 1981. It would be desirable for the Commission to begin practical work on those subjects.

59. Mr. Azzarouk (Libyan Arab Jamahiriya) resumed the Chair.

60. Mr. SCHARIOTH (Federal Republic of Germany) said that the Commission's work had made considerable progress in all areas during the past year. Certainly the most difficult achievement had been the completion of the draft Convention on International Bills of Exchange and International Promissory Notes. From the beginning the Federal Republic of Germany had been - and continued to be - sceptical about the need for a new convention in the field, since the coexistence of the two existing systems had not given rise to serious problems. His Government also felt, however, that the compromise reached after 14 years of work had resulted in a fair balance between the two systems. Further deliberations on substance were not likely to improve it significantly. Under the current circumstances, the expense of convening a diplomatic conference did not seem justifiable. In order to save money, therefore, his delegation advocated that the Sixth Committee should consider the draft and recommend its adoption to the General Assembly at a time to be determined later.

61. His Government was pleased to note that the Commission had also succeeded in completing its work on the draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works. The Guide contained a valuable analysis of the legal difficulties raised by such contracts as well as a useful outline of possible solutions. The Guide should prove to be an effective instrument for obviating problems and would certainly play an important role in improving international economic relations and trade.

62. His delegation was following with great interest the efforts of the Working Group on International Contract Practices with regard to the preparation of uniform rules on the liability of operators of transport terminals. It was to be hoped that the Working Group would be able to conclude its work on the subject at its

(Mr. Scharioth, Federal Republic of Germany)

meeting in January 1988. The uniform rules would fill a serious gap in international transport law and would make a contribution to its worldwide unification.

63. His Government noted with satisfaction that the 1980 United Nations Convention on Contracts for the International Sale of Goods would enter into force on 1 January 1988. His Government had undertaken the necessary steps for the ratification of the Convention and hoped that a sizable number of States would ratify the Convention or accede to it in the near future.

64. In conclusion, he said that the substantial results achieved by the Commission at its twentieth session had proven once again that it was one of the most competent expert bodies within the United Nations. His Government was pleased to have been associated, in the capacity of an observer, with the work of the Commission and its working groups. In view of the Commission's important function in the harmonization and development of international trade law, the Federal Republic of Germany would continue to support it and actively participate in its work.

65. Mr. ABADA (Algeria) drew attention to the great effectiveness of the Commission's work and commended the secretariat on its valuable assistance.

66. With regard to the draft Convention on International Bills of Exchange and International Promissory Notes, Algeria felt that it might be appropriate to submit the draft to the Governments to give them time to study the text before its possible adoption. Algeria did not deny the paramount importance of convening a diplomatic conference to enable the great majority of States to participate and find the best possible balance between the various legal systems. Nevertheless, in view of the financial implications of such a solution, it would be preferable to have the Governments reconsider the text.

67. With regard to the draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works, his delegation supported the position of the Argentine delegation, in giving preference to full protection for the weakest parties, the developing countries.

68. With regard to working methods, Algeria agreed with what was stated in paragraph 344 of the report (A/42/17) about increasing the membership of the Commission and reviewing the membership of its working groups. Such measures would certainly help in the process of codifying and developing international law.

69. Mr. LIU Zhemnin (China) said that by completing the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works, UNCITRAL had fulfilled the relevant tasks assigned to it by the General Assembly.

(Mr. Liu Zhemnin, China)

70. The draft Convention reflected a range of positions, incorporating as it did practices based on different systems. It represented a development of international trade law, notwithstanding some remaining imperfections. A sometimes simplistic compromise had led to complicated wording in several of the articles. On the whole, however, his delegation considered the text acceptable. It was a step towards the unification and development of international law and the expansion of economic and trade relations. His country wanted the Convention to be concluded promptly. As far as the procedure was concerned, it believed that consideration could be given to having the text adopted during the current session of the General Assembly.

71. Referring to the legal implications of the new international economic order, he said that now that UNCITRAL had completed the draft Legal Guide, there was a comprehensive description of the rights of parties to international contracts for construction of industrial works, which would facilitate the settlement of disputes. The completion of the Guide was particularly significant for the developing countries and an important contribution as far as the drafting of law connected with the establishment of a new international economic order was concerned. He hoped that the secretariat would disseminate the text as widely as possible in all the official languages.

72. With regard to the status of conventions, he noted with satisfaction that the United Nations Convention on Contracts for the International Sale of Goods (1980) would enter into force on 1 January 1988. Widespread accession to that instrument would accelerate the unification of international trade law. He supported the proposal that the General Assembly should adopt a resolution requesting all States to accede to the Convention.

73. China had undertaken a vast programme of reform in order to build a modern State. It had begun drafting new laws and would co-operate with other States in parallel efforts to unify international trade law.

74. Mrs. MULINDWA-MATOVU (Uganda) said that her delegation attached great importance to the work of the Commission, in which it had participated fully as a member. She noted with satisfaction the commendable progress made by UNCITRAL with regard to the harmonization and codification of international law.

75. Her delegation also set great store by the activities of the Working Group on the New International Economic Order. Having fallen victim recently to the construction of a malfunctioning industrial plant, her country was fully aware of the consequences and cost that could arise from a complicated contract. Accordingly, she welcomed the draft Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works, which was a first step towards achievement of the objectives set out in the General Assembly resolution on economic development and the establishment of a new international economic order. Her delegation favoured prompt and widespread dissemination of the document by the secretariat, and supported UNCITRAL's request that the General Assembly should recommend its use. Furthermore, Uganda welcomed the secretariat's preparatory work

(Mrs. Mulindwa-Matovu, Uganda)

with regard to international procurement, hoping that it would soon be completed so that the Working Group on the New International Economic Order could proceed with its examination of the topic.

76. Her delegation took particular interest in UNCITRAL's training and assistance activities, and appreciated its collaboration with other bodies in the organization of seminars and symposia. Uganda was grateful for the participation of members of the UNCITRAL secretariat in such events. Training and assistance should be given even higher priority.

77. She welcomed the adoption of the draft Convention on International Bills of Exchange and International Promissory Notes, which her delegation considered a landmark in the unification of laws dealing with international negotiable instruments. She fully supported the Commission's recommendations to the General Assembly to consider the draft with a view to its adoption.

78. She expressed satisfaction with the general co-ordination of the Commission's work with that of other bodies dealing with international trade law, such as the International Institute for the Unification of Private Law (UNIDROIT), the Council for Mutual Economic Assistance and the Hague Conference on Private International Law, which doubtless contributed to the integration of existing trade law.

79. With regard to the conventions emanating from the work of the Commission, she said that her country was considering ratifying those which it had not yet ratified. She sincerely hoped that the financial costs would not be used as a pretext for reducing the time allocated to future sessions of the Commission, since that might adversely affect both the quality and the quantity of its work.

The meeting rose at 1 p.m.