



SUMMARY RECORD OF THE 4th MEETING

Chairman: Mr. CALLE Y CALLE (Peru)

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LAW ON THE WORK OF ITS FOURTEENTH SESSION (continued)

ORGANIZATION OF WORK

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The meeting was called to order at 10.50 a.m.

AGENDA ITEM 117: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS FOURTEENTH SESSION (A/36/17) (continued)

1. Mr. ROSENSTOCK (United States of America) recalled the importance which his Government attached to the work of the United Nations Commission on International Trade Law (UNCITRAL), which was always of a very high standard and the usefulness of which had again been evidenced in 1980, when the UNCITRAL Arbitration Rules had enabled the Governments of the United States and Iran to reach an agreement on their differences. His country had signed the United Nations Convention on Contracts for the International Sale of Goods and urged Governments which had not yet done so to take steps to ratify or accede to that monumental Convention, since it was not enough for Governments to praise the work of UNCITRAL without making use of the instruments resulting from the drafts produced by the Commission. States should inform UNCITRAL in timely fashion of any difficulties which proposed instruments might present for them. In that connexion, he commended the Secretariat for its efforts to overcome the inertia sometimes encountered by UNCITRAL and endorsed the Commission's recommendation to the General Assembly, in paragraph 118 of its report, that the Secretary-General should be authorized to keep Governments informed on the status of Conventions.
2. With regard to international payments, and in particular the draft Convention on International Bills of Exchange and International Promissory Notes and Uniform Rules on International Cheques, he was pleased to note that the Working Group had essentially completed its work, and he hoped that many Governments would reply when the texts and the commentary were communicated to them in the spring of 1982 for comments. As for the establishment of a universal unit of account, which was of great importance, he was sure that, there again, UNCITRAL would continue to carry out its task in a satisfactory manner.
3. With respect to the preparation of administrative guidelines for the use of the UNCITRAL Arbitration Rules, he pointed out the importance of ensuring some uniformity in the use of the Rules, so that parties would know precisely what procedure would be applied to them when they accepted arbitration. He was confident that the Secretariat would bear that need in mind in preparing the revised text of the guidelines.
4. Where the drafting of a model law on arbitral procedure was concerned, he was equally confident that the Secretariat, in preparing the studies and drafts requested of it by UNCITRAL, would follow the suggestions made by the Commission at its fourteenth session.
5. He was pleased at the constructive climate that had prevailed in the Working Group on the New International Economic Order. A legal guide relating to contracts for the supply and construction of large industrial works would be worth while, since it would be a great help to developing countries in negotiating such contracts and would also contribute to the development of international trade by facilitating trade relations between States.

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(Mr. Rosenstock, United States)

6. With regard to the co-ordination of legal activities in the field of the harmonization and unification of international trade law, while he recognized the magnitude of the problem and the concern which UNCITRAL devoted to it, he believed that Governments and the regional organizations to which they belonged also had a responsibility to give effect to the General Assembly resolutions according UNCITRAL a central co-ordinating role in that field and to encourage the Commission to make full use of the authority vested in it.

7. Mr. CALERO RODRIGUES (Brazil) said that the standard of the work done by UNCITRAL at its fourteenth session was as high as in previous years. The fact that it had spent most of its time on procedural questions was due to its laudable concern to consider all aspects of a subject before embarking upon the preparation of draft texts.

8. With regard to international payments, he noted that the Working Group on International Negotiable Instruments had completed a draft Convention on International Bills of Exchange and International Promissory Notes, which was to be communicated to States for comments and on which UNCITRAL had wisely decided that no final action should be taken before work was completed on Uniform Rules on International Cheques. His delegation did not, however, share the view of UNCITRAL that those texts should be adopted by a diplomatic conference, and not by the General Assembly upon a recommendation of the Sixth Committee. In view of the cost of holding a diplomatic conference, it might be better if the eventual adoption of those texts took place in the General Assembly. His delegation therefore reserved its position on the question.

9. Consideration of the establishment of a universal unit of account for international conventions and of the question of electronic funds transfer was still at a preliminary stage, and he welcomed the caution displayed by UNCITRAL in that regard.

10. With regard to international trade contracts, he noted that the Working Group on International Contract Practices had submitted a set of draft uniform rules on liquidated damages and penalty clauses to UNCITRAL, which had preferred to await the comments of Governments and international organizations before deciding on the form that the rules should take. His delegation, like UNCITRAL, had no definite views on the matter but noted that, in paragraph 40 of its report, UNCITRAL raised the question whether the Sixth Committee would be prepared to devote a part of its annual sessions to an examination of the draft uniform rules. While the Sixth Committee did not have the same legal expertise as UNCITRAL in that highly technical field, it might examine the text if delegations were enabled to prepare themselves sufficiently in advance.

11. Where international commercial arbitration was concerned, the UNCITRAL Arbitration Rules had won wide acceptance and the Commission was now drafting guidelines for the use of the Rules in administered arbitration. However, he was sure that UNCITRAL was aware of the risk of producing guidelines that were too stringent. As for the possibility of preparing a model law on arbitral procedure, he believed that such a text would be of the greatest assistance to Governments and could only advance the application of commercial arbitration.

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(Mr. Calero Rodrigues, Brazil)

12. While he agreed with UNCITRAL that it would be too ambitious to attempt to deal immediately with all aspects of international trade law related to the new international economic order, he could not deny that he was disappointed that so little progress had been made on an important question in the study of which UNCITRAL had a prime role to play.

13. With regard to the subjects of co-ordination of work and training and assistance in the field of international trade law, the relevant chapters of the report showed that UNCITRAL was fully aware of the significant role it was called upon to play.

14. With regard to the status of Conventions, it seemed normal that UNCITRAL should wish States, and the Commission itself, to be kept informed of the situation of international instruments based on its work. However, he had strong objections to the trend in the Commission towards trying to involve UNCITRAL in the process leading to the signing and ratification of or accession to such instruments. Apparently UNCITRAL now wanted to go further, since it was recommending that the General Assembly should authorize the Secretary-General to "invite" States to supply him with information on that point "within a specified period of time". The Secretariat would also be requested "to take such measures as it deems appropriate to promote the wider acceptance of these Conventions". His delegation could not support those recommendations, which would give the Secretary-General powers that were not in conformity with his normal functions and would lead him and UNCITRAL into involvement in matters that were within the exclusive competence of Governments. His delegation had expressed its views on that matter at the preceding session, during the discussion on the multilateral treaty-making process, and his Government had reaffirmed its position in the comments it had transmitted to the Secretariat in response to the request made by the General Assembly in its resolution 35/162. Consequently, while his delegation accepted paragraph 1 (a) of the Commission's recommendation in paragraph 118 of its report, it would firmly oppose the adoption of paragraph 1 (b) and paragraph 2.

15. Mr. HATTINGA van't SANT (Netherlands) said that his country had attended the fourteenth session of the Commission as an observer and had noted with satisfaction the progress being made on a number of topics, in particular international bills of exchange and international cheques. His Government was also very interested in the establishment of a universal unit of account for international conventions and would be represented at the January 1982 session of the Working Group on International Negotiable Instruments.

16. He welcomed the work being done in the field of international arbitration and UNCITRAL's decision to entrust its Working Group on International Contract Practices with the drafting of a model law on arbitral procedure.

17. The Netherlands had attended as an observer the second session of the Working Group on the New International Economic Order, convened in Vienna in June 1981, at which a useful exchange of views had taken place. His delegation fully agreed with the intention to draft a legal guide for turn-key contracts, but hoped that it would also prove possible to draft model clauses.

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(Mr. Hattinga van't Sant, Netherlands)

18. His delegation noted the suggestion that, in a future study on industrial co-operation, the Working Group on the New International Economic Order should deal not only with the relations between enterprises but also with intergovernmental agreements. He would like to reiterate the position taken by his delegation the preceding session, namely, that UNCITRAL should limit itself to its own field of competence, which was broad enough - the private international law aspects of industrial and technological co-operation. Issues of public international law and trade policy should be left to other United Nations bodies which were more qualified to deal with them.

19. With regard to the co-ordination of legal activities in the field of the harmonization and unification of international trade law, he stressed the importance of such co-ordination between the various organizations in that field, such as the Hague Conference on Private International Law, UNIDROIT and UNIDO. He noted in that connexion that in 1982 the Hague Conference would commence preparations for a review of the 1955 Hague Convention on the Law Applicable to International Sales of Goods. Members of UNCITRAL would also be invited to that session, the costs of which would be borne partly by the Netherlands Government.

20. He noted with satisfaction that the Second UNCITRAL Symposium on International Trade Law, held in Vienna in June 1981, to which his Government had made a substantial financial contribution, had been successful. He hoped that such symposia would become a regular activity of UNCITRAL.

21. Finally, with regard to the status of Conventions, dealt with in chapter VIII of the report, his delegation was pleased with the success of the United Nations Convention on Contracts for the International Sale of Goods. Most of the States members of the European Economic Community had signed the Convention - the Netherlands being among the signatories - or had expressed their intention to do so.

22. Mr. VINAL CASAS (Spain) endorsed UNCITRAL's decision that the Working Group on International Negotiable Instruments should draw up the draft Convention on International Bills of Exchange and International Promissory Notes and the Uniform Rules on International Cheques as two separate texts, since the nature of the two instruments and their legal effects would not be the same. Furthermore, the legal status of those questions differed according to whether or not a State's legal system was based on Roman law.

23. With regard to international trade contracts, his delegation believed that UNCITRAL had been wise to defer a decision on the form to be taken by the draft uniform rules on liquidated damages and penalty clauses, since opinions differed as to whether the draft rules should be incorporated in a convention, a model law or simply a recommendation. The replies of Governments and international organizations to the questionnaire that was to be sent to them should shed some light on the advantages and drawbacks of whatever procedure might be following in the future.

24. Where international commercial arbitration was concerned, his delegation agreed that the Commission should issue guidelines in the form of recommendations

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(Mr. Viñal Casas, Spain)

for administering arbitrations under the UNCITRAL Arbitration Rules and believed that the guidelines should be flexible enough to be adapted to the procedures of arbitral institutions and other relevant bodies. He was in favour of commencing work on a model arbitration law, both for reasons of substance relating to arbitration practice and for such practical reasons as the ever-increasing recourse to international arbitration. In the drafting of the model law, account would have to be taken of the importance of preserving the principle of equity between the parties.

25. With regard to the new international economic order, rules of international co-operation would have to be drawn up; if they were to be effective, they must take into account the progress of the ongoing negotiations on that issue and the need to co-ordinate the work of the various bodies competent in that field. That meant that UNCITRAL's wish for more time to study all relevant questions must be granted.

26. As for the future work of the Commission, his delegation endorsed UNCITRAL's medium-term plan for the years 1984-1989 and hoped that, as in the past, the Commission would be able to have summary records for its sessions devoted to the preparation of draft conventions and other legal instruments.

27. Ms. OLIVERAS (Argentina) said that UNCITRAL must take care to co-ordinate its work with that of the other organizations competent in the field of international trade law.

28. With regard to international payments, her delegation had attended as an observer the eleventh session of the Working Group on International Negotiable Instruments, held in New York in August, and it welcomed the amendments made to the drafts under discussion. Her delegation was in favour of drafting a clause to resolve the problems created by currency fluctuations and believed that the Secretariat should therefore continue to study the question and report to UNCITRAL at its fifteenth session.

29. Where international commercial arbitration was concerned, the Secretary-General should be requested to prepare a further revised text of the draft guidelines, together with commentaries.

30. With regard to the new international economic order, to which her delegation attached particular importance, she noted with satisfaction that the Secretary-General had been requested to continue and complete the study on clauses to be found in contracts for the supply and construction of large industrial works, had been entrusted with the drafting of a legal guide that should identify the legal issues involved in such contracts and suggest possible solutions to assist parties, in particular from developing countries, in their negotiations, and had been requested to prepare a study on industrial co-operation contracts.

31. She was gratified at the success of the Second UNCITRAL Symposium and hoped that the experience gained would help UNCITRAL to begin preparations for a third symposium as soon as possible.

(Ms. Oliveras, Argentina)

32. Lastly, her delegation supported the People's Republic of China in its wish to become a member of UNCITRAL. She might mention in that connexion that Argentina would like to rejoin the Commission when its composition was renewed in 1983.

33. Mr. SEYDOU (Niger), referring to the remarks made by the United States representative concerning the way in which drafts were prepared and the need for UNCITRAL to receive the comments of countries in time, said it should be remembered that the legal services of countries such as the Niger could not deal with all the questions submitted to them as quickly as those of the big and medium-sized Powers.

34. His delegation welcomed the progress made by the Working Group on International Negotiable Instruments and hoped that the Group would complete its review of pending questions at its twelfth session. While it agreed that the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Uniform Rules on International Cheques should in fact be drafted as two separate texts, his delegation did not yet have any firm views about the procedure to be followed, within UNCITRAL or elsewhere, for putting those texts into final form. All Member States should be able to study them carefully before their final adoption by a diplomatic conference.

35. His delegation, which had taken part as an observer in the second session of the Working Group on International Contract Practices, thought it logical for the draft rules adopted to be cast in the form of a model law because several delegations were opposed to the adoption of a convention on the subject. The Niger reserved the right to revert to that question after seeing the comments made by other States in response to the questionnaire mentioned in paragraph 43 of the UNCITRAL report.

36. With regard to the fluctuation in value of the major trade currencies, a problem whose full gravity had just been brought out by the recent increase in the value of the United States dollar, it would no doubt be impossible for the Commission to solve it single-handed, but it could turn its attention to the elaboration of clauses such as those mentioned in paragraph 48 of the report.

37. His delegation welcomed the progress made in co-ordinating the activities of bodies active in the field of international trade law, and it also supported the suggestion that regional seminars on international trade law should be organized so as to allow third world countries to benefit from the experience and knowledge of the members of UNCITRAL.

38. Mr. FERRARI BRAVO (Italy) observed that the fourteenth session of UNCITRAL, in which Italy had taken an active part, had not been characterized by dramatic achievements, but that steady progress had been made, since UNCITRAL was a pragmatic body where delegations refrained from sterile debates while striving to cope with the real needs of the development of international trade law.

39. With regard to international payments, his delegation commended the Commission on the useful work it had done in preparing a draft Convention on International

(Mr. Ferrari Bravo, Italy)

Bills of Exchange and International Promissory Notes together with draft Uniform Rules on International Cheques. The two separate texts had been brought into line very accurately and the competent Working Group had finished drafting them at its latest session, held in August in New York. His delegation hoped that the two final texts with accompanying commentaries would soon be available and that as many Governments as possible would make their opinions known, so that the Working Group could complete the final versions of the texts before the fifteenth session of UNCITRAL at the latest. It would be important at that time to ensure broad participation by States so that the final product would correspond to the needs of the international community. The ambitious nature of the two new drafts should not be underestimated, for their aim was to replace the Geneva Conventions of the 1930s and to reconcile the civil law and common law systems.

40. The question of a universal unit of account for international conventions was of less importance and Italy shared the doubts expressed by other delegations concerning the usefulness of such an endeavour. It favoured its continuation but did not attach high priority to it.

41. His delegation commended the quality of the work done by UNCITRAL on international trade contracts. However, the scope of the draft uniform rules seemed too limited to be the subject of a convention. His delegation considered that the Commission itself, together with its competent Working Group, could draft a model law, a course which would avoid burdening the already crowded agenda of the Sixth Committee, which did not in any case seem to be the appropriate forum for such highly technical work.

42. With regard to international commercial arbitration, his delegation supported the Commission's decision to issue guidelines in the form of recommendations to arbitral institutions and other relevant bodies to assist them in working out procedures for acting as appointing authority or providing administrative services in cases conducted under the UNCITRAL Arbitration Rules. However, that problem was less important than the task of drafting a model law on arbitral procedure. The preparatory studies on that point needed to be conducted very carefully and with the assistance of qualified experts from different countries representing the broadest possible spectrum of legal systems so as to avoid taking a single system of law, even the most developed one, as a model. That meant that the composition of the Working Group on International Contract Practices should be re-examined and enlarged to make it more representative.

43. Concerning the new international economic order, the competent Working Group had, rather than engaging in futile debates, wisely concentrated on the preparation, as a first step, of a legal guide to legal problems relating to contracts for the supply and construction of large industrial works. The results of that work seemed highly encouraging.

44. With regard to the co-ordination of activities relating to international trade law, his delegation stressed the importance of the efforts made in that direction by UNCITRAL and other competent bodies and praised in particular the initiatives taken by UNIDROIT and the Hague Conference on Private International

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Law, which had invited the members of UNCITRAL which were not members of those organizations to participate in their work. Such a practice should avoid costly overlapping and improve both the quality and quantity of achievements in the field of international trade law.

45. As to training and assistance in the field of international trade law, his delegation was happy to note that it had been possible to hold a second Symposium on the occasion of the fourteenth session of UNCITRAL. Italy had contributed to the financing of the Symposium because it considered it important to strengthen the contracting capability of developing countries. His delegation hoped that a third symposium could be organized and that more Governments would make financial contributions for that purpose.

ORGANIZATION OF WORK (A/C.6/36/1, A/C.6/36/L.1)

46. Mr. CALERO RODRIGUES (Brazil) said it would be useful to establish as soon as possible a time-table for the consideration of the various agenda items. The consideration of the UNCITRAL report would no doubt be completed on Monday, 28 September, and it had still not been decided which item would be taken up the following day. If a decision were taken at the last moment, delegations would find themselves completely unprepared. If the Committee was to conduct its work properly, it must have at least an approximate idea of the number of meetings to be assigned to the various agenda items.

47. The Bureau had, of course, been assigned that task, even though some of its members had not yet been appointed, but his delegation felt that the Chairman and the Rapporteur, who had already been elected, could propose a draft programme of work so as to facilitate the Committee's task. Any time lost at the beginning of the session could easily lead to an overload of work at the end, with the unfortunate results which that entailed.

48. The CHAIRMAN pointed out that three agenda items could already be considered in the coming weeks. Documents relating to agenda items 115, 116 and 122 had in fact already been distributed.

49. Mr. EL-BANHAWI (Egypt) supported the proposal made by the representative of Brazil. A programme of work should be drawn up forthwith, at least for the following week.

50. Although the documents relating to items 116 and 122 had already been circulated, item 125 should be taken up after item 115. The Committee could then consider item 116, followed by item 122, which it should take up at the same time as item 118, as it had the previous year. The Committee could continue by taking up item 121, since all delegations would by that time have had time to study the report of the International Law Commission.

51. The CHAIRMAN said that since some members of the Bureau had not yet been elected, the Committee should confine itself for the time being to drawing up its programme of work for the following week. All the items were certainly important,

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(The Chairman)

but it would be appropriate to begin with those for which the documents were already available and which related to matters which the Committee had already had the opportunity of considering at previous sessions.

52. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) said that the Chairman's suggestion was judicious. It was, however, surprising that item 125 could be regarded as an urgent matter. The item had just been referred to the Committee for the first time, and due consideration was necessary before it was taken up.

53. Mr. LAMANRA (Algeria) said that he wished to stress that the Group of African States did not wish to take up, immediately following item 117, item 115 relating to the report of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries, since the Group wished to assess the work of the Ad Hoc Committee with a view to submitting specific proposals on the conduct of its work. Item 116 might be taken up once consideration of item 117 had been concluded.

54. The CHAIRMAN suggested that the Committee should take up item 116 once consideration of item 117 had been concluded, and then consider items 122 and 118 together before proceeding to item 115.

55. Mr. HATTINGA van't SANT (Netherlands) supported the proposal made by the representative of Egypt. When the Vice-Chairmen had been elected, the working groups, particularly that entrusted with consideration of item 125, could begin their work. Moreover, the documents relating to item 125 were already available.

56. Mr. CASTRO VILLALOBOS (Mexico), referring to the Chairman's suggestion that item 122 relating to the report of the Special Committee on the Charter should be taken up immediately following item 116, said that Mr. Gonzalez Gálvez, Chairman of the Special Committee, who was to introduce the report, would not be in New York before 6 October.

57. Mr. CALERO RODRIGUES (Brazil) said that he supported the Chairman's suggestion. As for item 125, there was no reason why the Committee could not consider it at the beginning of the session.

58. Mr. FERRARI BRAVO (Italy) said that, since the documents relating to item 125 were already available, the Legal Counsel could be asked to introduce the item, which the appropriate working group could then consider in due course.

59. Mr. BUBEN (Byelorussian Soviet Socialist Republic) said that if members were concerned about the question of knowing which documents were ready or when they would be, they should take account of the fact that, according to the note by the Secretariat (A/C.6/36/L.1), the documents relating to item 124 would be available the following day. With respect to the proposal by certain delegations to give priority to item 125, he drew attention to paragraphs 5 and 6 of the Secretariat's note relating to the priority to be given to items 111 and 112, which indicated

(Mr. Buben, Byelorussian SSR)

that it would be appropriate to take up those two items before item 125. Nor did General Assembly resolution 35/177, by which item 125 had been referred to the Committee, indicate that the latter should take up that item as a matter of urgency at the current session. Those considerations should be borne in mind in drawing up the Committee's programme of work.

60. Mr. OUMAR (Mauritania) said that the Committee should support the judicious suggestion made by the Chairman, without, however, overlooking the need to be flexible where necessary.

61. Mr. ROSENSTOCK (United States of America) said that the Chairman's reasonable suggestions represented the best way of commencing the Committee's work. Nevertheless, it should be borne in mind that the working group on item 125 had the task of considering a draft body of principles. That was why the Committee should follow up the judicious compromise proposed by the representative of Italy in order to facilitate the Committee's work, a compromise which did not commit the Committee to taking up the item at any particular time.

62. The CHAIRMAN said that according to the order for consideration of items which he had suggested - and which could be changed if need be - the Committee would first take up item 116, then item 122, if the Chairman of the Special Committee on the Charter had arrived by that time, and then item 115. Further, informal consultations were necessary on the introduction of item 125.

63. Mr. EL-BANHAWI (Egypt) recalled that item 118 should be taken up at the same time as item 122, given the obvious connexion between the two matters.

64. Mr. BENA (Romania) said that his delegation was not opposed to the Chairman's suggestion, but since some members of the Bureau had yet to be elected, it was, for the time being, only necessary to reach agreement on the next item to be considered. Even if the date for consideration of items 118 and 122 were not fixed immediately, the working group on item 113 could always resume its deliberations at any time, since its work was not linked to debates in the Committee.

65. Mr. WENTZEL (Federal Republic of Germany) agreed that items 122 and 118 should be considered together. The previous year a number of meetings had been devoted to those two items, as was apparent from foot-note a/ on page 11 of document A/C.6/36/L.1, and that procedure had been highly satisfactory.

66. Mrs. MALIK (India) said that, since the working group on the peaceful settlement of disputes (item 113) had only to continue its work, the Committee should take up that item as soon as possible. With respect to item 125, delegations which had not yet studied the texts prepared by the Third Committee could be requested to hear the views of other delegations in a general debate before the working group began its work. That had been done in the past, particularly in the case of the peaceful settlement of disputes, the relevant working group having begun its work once the general debate had finished.

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67. Mr. ROSENSTOCK (United States of America) said that the Chairman's suggestion was acceptable. Nevertheless, with respect to the working groups, he stressed that they should be treated equally, and that if priority were to be given to any of them it should be given to the group dealing with item 125.

68. Mr. WENTZEL (Federal Republic of Germany) said that if it were deemed appropriate to allow delegations time required to study the question dealt with under item 125 before it was taken up, the item could be introduced by the Legal Counsel as soon as possible so that work on the item could begin quickly.

69. Mr. ORDZHONIKIDZE (Union of Soviet Socialist Republics) said that the Committee's initial programme of work had practically been drawn up. He could not understand the haste to take up item 125, since the question was not urgent.

70. Mr. ROSENNE (Israel) said that his delegation welcomed the Chairman's suggestions. There was no question of taking up item 125 precipitately, but that item should be introduced by a senior representative of the Secretary-General as soon as possible for the reasons put forward by several delegations, in particular by the representative of India.

71. The CHAIRMAN said that the order which the Committee adopted for consideration of the various items did not in any way reflect their importance or relevance. Consultations could be held with respect to the introduction of item 125. If he heard no objection, he would take it that it was the Committee's decision that following completion of its consideration of agenda item 117, it would take up the items appearing in its programme of work in the following order: item 116, items 122 and 113 (those two matters being considered in the same way as at the thirty-fifth session) and item 115.

72. It was so decided.

The meeting rose at 1 p.m.