



SUMMARY RECORD OF THE 6th MEETING

Chairman: Mr. FRANCIS (Jamaica)

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The meeting was called to order at 10.35 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. Ms. FORTON (Canada) said her delegation was pleased to note the progress made by UNCITRAL on the draft Convention on International Bills of Exchange and International Promissory Notes and supported the procedure adopted by the Commission to complete its work on it, as well as the decision to expand accordingly the Working Group on International Negotiable Instruments to include all States members of the Commission. It also felt that the procedure of inviting all States not members of UNCITRAL to participate in the twentieth session of the Commission would ensure the broadest possible participation in the consideration of the final text of the draft Convention.
2. On the question of international payments, her delegation welcomed the completion of the Legal Guide on Electronic Funds Transfers and the authorization given by UNCITRAL to publish the Guide.
3. With regard to the work relating to the new international economic order, she noted with satisfaction the progress achieved on the legal guide on drawing up international contracts for the construction of industrial works. When completed, that guide would be another substantial contribution of UNCITRAL to international trade law.
4. Where international commercial arbitration was concerned, she said that Canada had acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which had entered into force in Canada on 10 August 1986. Consequently, foreign arbitral awards could be enforced in Canada in a similar way to domestic awards. Moreover, in early 1986, the Federal Parliament of Canada had adopted a new commercial arbitration code based on the UNCITRAL Model Law on International Commercial Arbitration. Most of the Canadian provinces had adopted similar laws also based on the Model Law. That showed the usefulness and importance of the work of UNCITRAL in that field.
5. Lastly, she noted that the achievements of UNCITRAL in international trade law and the effective way in which the Commission was working motivated her delegation's strong support for that work, and its intention to participate more fully in it in future.
6. Mr. MIKULKA (Czechoslovakia), referring to the part of the UNCITRAL report dealing with international payments, noted that at the current stage the Sixth Committee should pronounce itself on the procedure for concluding the work on the draft Convention on International Bills of Exchange and International Promissory Notes. In view of the financial difficulties being faced by the United Nations, his delegation shared the view of the majority of members of the Commission that there would be no justification for convening a diplomatic conference to consider the draft. However, it felt that the procedure adopted by UNCITRAL, as set forth in paragraphs 213 and 220 of its report, would make it possible to bring the work

(Mr. Mikulka, Czechoslovakia)

to a satisfactory conclusion and reduce to a minimum the negative consequences of the decision not to convene a diplomatic conference. As it was necessary for all States to participate in the final phase, he felt that it would be useful to transmit the draft Convention once again to the Governments of all Member States for their comments. He also supported the decision of UNCITRAL to expand the Working Group on International Negotiable Instruments to allow all the States members of the Commission to participate in it, and to invite States which were not members to participate as observers.

7. His delegation attached great importance to the efforts of UNCITRAL to establish a new international economic order. It therefore welcomed the work done on the legal guide on drawing up international contracts for the construction of industrial works, and he expressed the hope that UNCITRAL would be able to complete its work on it at its twentieth session.

8. As to the future work of UNCITRAL in that field, his delegation felt that priority should be given to the consideration of questions of international trade which affected relations among States, thereby contributing to the gradual development of economic relations among States based on the principles of non-discrimination, co-operation and mutual benefit. Accordingly, importance should be attached to the legal aspects of international trade which were directly linked to the new international economic order, namely, scientific and technical co-operation, industrial co-operation, countertrade, etc. Although he did not underrate the importance of drawing up model legal rules on electronic funds transfers, he felt that the question was not as urgent as those issues.

9. With regard to the remainder of the work of UNCITRAL, his delegation was pleased to note the progress achieved in the preparation of draft articles of uniform rules on the liability of operators of transport terminals. It was also pleased to note that UNCITRAL was gaining an increasingly wide reputation as the principal co-ordinating body for activities in the international trade law field, and that it had established strong ties of co-operation with the other international organizations in the same field.

10. Lastly, his delegation supported the proposals contained in the UNCITRAL report on its work programme for the twentieth session of the Commission.

11. Mr. SOKOLOVSKIY (Byelorussian Soviet Socialist Republic) said that, in the field of international trade, the principal objective continued to be to normalize it in order to eliminate the practices followed by some States of imposing sanctions such as embargoes and economic blockades, and the artificial obstacles to trade and to the exchange of scientific and technological information. International economic relations could be based only on mutual equality and trust, and on strict compliance with adopted agreements. Therefore, at the Twenty-seventh Congress of the Communist Party of the Soviet Union, it had been proposed that a world congress should be convened to deal with problems relating to economic security, which was an important part of international security. Related proposals had been submitted to the General Assembly and were set forth in document A/41/191.

(Mr. Sokolovskiy, Byelorussian SSR)

12. With regard to the work of UNCITRAL, his delegation welcomed the progress achieved in the preparation of a draft Convention on International Bills of Exchange and International Promissory Notes. It felt that the draft contained acceptable solutions concerning the form of the bills, the scope of application of the Convention and the two concepts of the holder, namely, protected and unprotected, as well as the rights and duties of the parties to those instruments. It also contained important provisions on new types of international instruments, such as those expressed in monetary units of account or those establishing floating interest rates, which, although they were used in international trade, had not yet been regulated under existing legislation. The draft provided a reasonable compromise solution to the question of forged endorsements and other problems arising from the different conceptions embodied in two different legal systems.

13. With regard to the other topics dealt with at the nineteenth session of the Commission, his delegation welcomed the decision to complete, at the twentieth session, the legal guide on the drawing up of international contracts for construction of industrial works and felt that importance should be attached in future to the work on the Legal Guide on Electronic Funds Transfers, which could have a positive influence on the development of the use of those procedures in international payments.

14. Lastly, he felt that UNCITRAL should continue making a positive contribution to the unification and harmonization of international trade law to promote the economic equality of all States and, through it, collective economic security and better relations among States.

15. Mr. DJORDJEVIĆ (Yugoslavia) said that UNCITRAL, by devoting the greater part of its nineteenth session to the draft Convention on International Bills of Exchange and International Promissory Notes, had borne in mind that it was a question closely connected with the most important areas of international economic and trade co-operation. He expressed the hope that UNCITRAL would finalize its work at its next session and submit the text of the Convention to the General Assembly for consideration and adoption. For practical reasons, as well as for reasons of economy, he felt that the most appropriate procedure for the adoption of the Convention was the one set forth in paragraph 220 of the UNCITRAL report.

16. However, several questions required further consideration. For example, the definitions of "holder" and "protected holder" should be reconsidered, since they might have different meanings under the various legal systems. Moreover, if inclusion of a provision permitting floating interest rates was accepted, a solution should be sought in order to fulfil, at the same time, the condition in respect of a definite sum of money.

17. Other questions which should be further considered were the definitions of "signature" and "forged signature", as well as the concept of "knowledge" and liability for forged signature and forged endorsement, questions to which objective criteria should, as far as possible, be applied. The inclusion of an element such as "negligence" could not contribute to greater legal security or to wider acceptance of the provisions in question.

(Mr. Djordjević, Yugoslavia)

18. With regard to international payments, his delegation welcomed the further work on the preparation of a legal guide on the problems arising out of electronic funds transfers.
19. With reference to the work of the Working Group on the New International Economic Order, additional efforts should be made to facilitate the adoption by UNCITRAL at its twentieth session of the legal guide on the drawing up of contracts for the construction of industrial works, which would make an important contribution to the establishment of the new international economic order and would benefit the developing countries.
20. Further, with respect to the new international economic order, his delegation deemed it positive that UNCITRAL had initiated an exchange of views on such important questions as procurement, countertrade and joint ventures. Procurement, being less controversial, might be taken up as one of the first items for discussion. Moreover, greater attention should be devoted in the near future to the question of joint ventures, which represented one of the most successful forms of co-operation between developing and developed countries. In that connection, UNCITRAL should continue to follow the development of international economic and trade relations and to take into account the problems of developing countries.
21. It was important for UNCITRAL to continue to co-ordinate its work in the area of international trade law and to co-operate with other bodies. In particular, his delegation appreciated UNCITRAL's activities in the area of training and assistance, particularly for the training of young management personnel.
22. Mr. LUKYANOVICH (Union of Soviet Socialist Republics) said that 20 years had elapsed since the General Assembly had established UNCITRAL, which had performed sterling work in assisting in the unification of international trade law. The Soviet Union attached great importance to international co-operation and trade. In the programme of the Twenty-seventh Congress of the Communist Party of the Soviet Union, adopted in February-March 1986, it was stated, inter alia, that the Communist Party of the Soviet Union favoured the establishment of more comprehensive long-term relations in the economic, scientific and technical spheres on the basis of the equality and mutual benefit of States, that international economic co-operation promoted the strengthening of peaceful coexistence between States with different socio-political systems, and that the Soviet Union rejected any form of discrimination or use of trade relations to put pressure on other States. The General Secretary of the Communist Party of the Soviet Union, M. Gorbachev, had proposed the convening of a world congress on economic security issues in order to analyse the obstacles besetting international economic relations. The socialist countries had requested the inclusion of an additional item in the agenda of the United Nations General Assembly on the establishment of a comprehensive system of international security (document A/41/191), one of the principal elements of which comprised economic measures.
23. UNCITRAL had considered various issues discussed in the Working Group on International Negotiable Instruments, including several novel topics such as instruments with floating interest rates. With regard to the procedure to be followed for the adoption of the draft Convention on International Bills of

(Mr. Lukyanovich, USSR)

Exchange and International Promissory Notes, although a slight preference had been expressed for the second of the procedures referred to in paragraph 213 of document A/41/17, the Soviet Union thought that consideration should be given to the possibility of following the first procedure, namely, of convening a diplomatic conference. The draft Convention had been analysed for more than 10 years by experts from 36 Member States. Adoption of the Convention in the context of an international conference on private international law would help to improve it in technical and legal terms and would promote the adoption of more carefully elaborated formulations.

24. The Soviet Union welcomed the announcement that in 1987 work would be completed on the drafting of the legal guide on the drawing up of international contracts for the construction of industrial works, as well as on matters relating to the new international economic order and electronic funds transfers. In its work, the Commission should stress the use of principles which were universally recognized in international trade law.

25. Mr. ABDEL KHALIK (Egypt) said that, as the last session of UNCITRAL had been shortened by one week owing to the financial crisis of the United Nations, it had not been possible to complete the review of the draft Convention on International Bills of Exchange and International Promissory Notes, nor some of the recommendations of the drafting group. The draft Convention was highly technical and complex, and it was to be hoped that at the following session the Commission would be able to finalize its work on the topic. The usual procedure for adopting the draft text would be to hold a diplomatic conference. However, in view of the current financial crisis, Egypt was ready to accept adoption of the Convention by the General Assembly. His delegation could also accept the mechanism envisaged whereby the Working Group on International Negotiable Instruments would consider the draft articles along with the recommendations of the drafting group and the comments of Governments so as to minimize the controversial issues to be dealt with at the twentieth session of UNCITRAL, which should be given the necessary time to finalize its work on such an important instrument. Egypt agreed with the mandate proposed for the Working Group (document A/41/17, para. 222), but had doubts about the practicability of convening the Group in January 1987 since Governments would have very little time in which to transmit their comments. Perhaps the Working Group could meet in March or April 1987. If the procedure was approved whereby the General Assembly adopted the Convention, careful consideration would have to be given to how the Sixth Committee could maintain a balance between the need for sufficient time to consider and adopt the draft Convention and the time needed for consideration of the remaining items on its agenda. The matter should be discussed informally until UNCITRAL decided on the appropriateness of referring the draft Convention to the General Assembly. With respect to the question of whether the General Assembly should adopt the Convention without amendment of the substance of the text, that would largely depend on the efforts to be undertaken by the Working Group and UNCITRAL at its twentieth session to accommodate, as far as possible, the views expressed by Governments.

26. Egypt noted with satisfaction the authorization given by the Commission to the Secretariat to publish the draft Legal Guide on Electronic Funds Transfers.

(Mr. Abdel Khalik, Egypt)

27. Egypt, in common with other developing countries, attached great importance to the Commission's work on the new international economic order and wished to commend UNCITRAL on its determination to take into consideration the interests of the developing countries throughout its work on the topic.

28. Egypt noted with satisfaction the excellent co-ordination existing between UNCITRAL and other bodies dealing with international trade law, referred to in paragraph 247 of document A/41/17. Co-operation with the Asian-African Legal Consultative Committee (AALCC) had resulted in adoption of the Arbitration Rules by the Regional Centres for Arbitration established under the auspices of AALCC at Kuala Lumpur and Cairo. Such co-operation had enabled the Cairo Regional Centre to conduct a series of seminars and symposiums with the aim of creating wider understanding of international trade law.

29. Mr. HOPPE (German Democratic Republic) said that his delegation had noted with interest the work of UNCITRAL on the draft Convention on International Bills of Exchange and International Promissory Notes. Even at the current stage, what had been attained was remarkable in view of the difficulty of merging two different concepts, i.e., those of the 1930 Geneva Convention and those of common law. The present draft was a compromise providing justifiable and practicable solutions, which was why the German Democratic Republic was interested in the earliest possible conclusion of the work in the form of a convention.

30. The German Democratic Republic noted with satisfaction that the draft legal guide on the drawing up of international contracts for the construction of industrial works could be concluded in 1987.

31. The German Democratic Republic noted that, according to the information available to it, the entry into force of the Convention on the Limitation Period in the International Sale of Goods (New York, 1974) and that of the Convention on Contracts for the International Sale of Goods (Vienna, 1980) required accession or ratification by, respectively, only one and two States, which would probably take place in the near future. That was particularly remarkable since it would give practical effect to the work of UNCITRAL in that area and would serve to promote the development of trade and economic relations on the basis of mutual advantage and equality.

32. Mr. WOOLCOTT (Australia) said that he remained convinced of the usefulness of a uniform scheme to regulate the law relating to international negotiable instruments and that the draft Convention on International Bills of Exchange and International Promissory Notes was a reasonable compromise between the civil and the common law approaches in that area. Of the three procedures proposed for the adoption of the draft Convention in paragraph 213 of document A/41/17, Australia believed, for the reasons expressed at the nineteenth session of UNCITRAL, that the appropriate one had ultimately been adopted, inasmuch as the convening of a diplomatic conference could not be justified in the light of the financial difficulties facing the United Nations. In any case, the convening of a diplomatic conference would not be the most appropriate procedure, given the extreme technical complexity of the Convention and the absence of conflicting political or economic issues. A further Working Group session on the draft Convention was highly

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(Mr. Woolcott, Australia)

desirable because drafting and other technical problems had arisen as a result of some of the Commission's decisions at its nineteenth session. In addition, it would facilitate expeditious consideration of the draft Convention at the twentieth session of UNCITRAL.

33. Australia supported the work of the Commission to date on electronic funds transfers and endorsed the Commission's decision to entrust to the Working Group on International Negotiable Instruments the task of preparing uniform legal rules in that area.

34. Australia supported the work of the Working Group on the New International Economic Order, which was nearing completion of the legal guide on drawing up international contracts for the construction of industrial works. Future projects of the Working Group which Australia would support included examination of joint ventures, countertrade and procurement. He stressed that the participation of developing countries in the Working Group was necessary if the final result was to be acceptable to the countries which the work was supposed to benefit.

35. Progress had also been made in the work on the liability of operators of transport terminals. The uniform rules had the potential to complement the Convention on International Multimodal Transport of Goods and the Convention on the Carriage of Goods by Sea (Hamburg Rules, 1978). Such harmonization of legal infrastructures, by facilitating international trade, could be of great benefit to the world community.

36. UNCITRAL was at a kind of crossroads for two reasons. The first concerned the implementation of the instruments elaborated by the Commission. The crucial one was the United Nations Convention on the International Sale of Goods, whose widespread adoption by Member States would be the single greatest step toward achieving uniformity in international trade law. Australia, which had, over the years, made a considerable contribution to the work of UNCITRAL, had begun the process of accession to that Convention, with the enactment of the necessary legislation in one Australian jurisdiction (Queensland). The remaining Australian jurisdictions were expected to follow shortly in adopting the necessary legislation enabling Australian accession to the Convention. The second reason concerned the choice of future topics - it was necessary to ensure that new topics were selected in areas where harmonization of laws was needed and achievable - and the need to see that the work of the Commission and the working groups was conducted efficiently and expeditiously.

37. With regard to the Model Law on International Commercial Arbitration, Australia had, during 1984 and 1985, set up facilities to assist with international arbitrations, and had revised its domestic arbitration legislation. It was currently giving positive consideration to the adoption of UNCITRAL's Model Law.

38. Australia viewed seriously its responsibilities as a member of UNCITRAL, which included disseminating information and providing expertise and direction to the Commission. It was of a view that future work on procurement, joint ventures and countertrade in the context of the new international economic order were very necessary, and it supported continuing consideration of the liability of operators



(Mr. Woolcott, Australia)

of transport terminals, as well as the proposed future work on automatic data processing. With regard to training and assistance, Australia played an important role in facilitating the exchange of views on international trade law within the Asian-Pacific region. Among its activities were the Regional Trade Law Seminar, co-sponsored by the Australian Government, UNCITRAL and the Asian-African Legal Consultative Committee, held in 1984. The holding of a second Regional Trade Law Conference was planned for 1988. The 1986 Trade Law Conference would be held in November and would examine, inter alia, UNCITRAL's Model Law on International Commercial Arbitration and certain legal topics relating to trade between Australia and China.

39. Mr. BUDAI (Hungary) said that the UNCITRAL report on the work of its nineteenth session proved once again the competence and dedication of that Commission to the establishment and strengthening of legal order and security in the field of international trade. Hungary, which was a country with an open economy, attached paramount importance to international trade and to the development of mutually beneficial trade relations with other countries. The stronger the economic co-operation, the sounder the political relations would be. With that in mind, Hungary lent its full support to efforts for the elimination of discrimination and protectionism from international trade and for the reaffirmation of the principles and practice of mutual trust in international trade relations. The strengthening of legal order in that area was an urgent task for all countries, irrespective of their social and economic system, size or power.

40. Hungary was prepared to make further contributions to the Commission's work, which was highly appreciated by a number of government organs and institutions in that country. The report of UNCITRAL on the work of its nineteenth session was yet another manifestation of the relevance of that work to the issues that should be addressed in order to enhance the unhindered flow of international trade.

41. A major portion of that report (A/41/17) dealt with the draft Convention on International Bills of Exchange and International Promissory Notes. Hungary had, from the outset, supported the elaboration of such a legal instrument and was of the view that its present form and content were basically acceptable. At the same time, it fully appreciated the endeavour of UNCITRAL to give a final touch to that text at the following session of the Working Group on International Negotiable Instruments. With regard to the remaining subjects addressed in the report, his delegation endorsed the decision of the Commission to undertake work on the formulation of model legal rules on electronic funds transfers. Moreover, it was encouraged by the statement in the report that the Working Group on the New International Economic Order would complete its examination of the legal guide on drawing up international contracts for the construction of industrial works at its next session. Finalization and adoption of that document would be a significant step in implementing the mandate of the Commission. Regarding future work in that area, his delegation supported the view that the subject of procurement should be given priority, since the close link between procurement and the system of tenders made clear the importance of unification in that field for the promotion of international trade. Regarding international commercial arbitration, the delegation of Hungary welcomed the intention of UNCITRAL to promote further

(Mr. Budai, Hungary)

unification in that area, especially in respect of multi-party arbitration. Future work on taking of evidence in arbitral proceedings was also important. Lastly, his delegation wished to express its appreciation to the secretariat of UNCITRAL, whose high professional level had contributed to the successful work of the nineteenth session.

42. Mr. ROMPANI (Uruguay) recalled that during its nineteenth session, UNCITRAL had had as its Vice-President Mr. Luis A. Delfino Cazet, the representative of Uruguay. With regard to the programme of activities of UNCITRAL, his delegation supported that work, as well as the various studies which were being undertaken in the area of international trade.

43. The Government of Uruguay was currently considering the possibility of ratifying some of the conventions elaborated by UNCITRAL, and in particular the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). Regarding the Model Law on International Commercial Arbitration, Uruguay was considering that text with a view to taking a decision on accession to it in due time.

#### OTHER MATTERS

44. The CHAIRMAN said that he had received a letter from the Under-Secretary-General for Public Information, stating that, owing to the current financial crisis, the Department of Public Information would be unable to provide press releases in English for all the meetings of the Main Committees and that, with regard to the Sixth Committee, press releases would be issued only for agenda items 126, 128, 131 and 132, which it was expected could be given full coverage.

45. The CHAIRMAN said he would take it that the members of the Sixth Committee, wished to take note of the information provided by the Under-Secretary-General.

46. It was so decided.

The meeting rose at 12.10 p.m.