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Chairman: Mr. AFONSO (Mozambique)

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The meeting was called to order at 3.20 p.m.

AGENDA ITEM 126: PROGRESSIVE DEVELOPMENT OF THE PRINCIPLES AND NORMS OF INTERNATIONAL LAW RELATING TO THE NEW INTERNATIONAL ECONOMIC ORDER (continued) (A/46/352 and Add.1)

1. Mr. LIAO Jincheng (China) said that the world economic situation was extremely grim, characterized by heightened contradictions in economic relations and growing disparaties between North and South. Most developing countries were still confronting such difficulties as economic stagnation or retrogression, heavy debt burdens, a deteriorating world trade environment and a lack of development funds. Further analysis of those realities showed that, apart from internal causes that varied from country to country, the ever-growing disparities between North and South were attibutable mainly to the unjust and irrational world economic order. The question of the establishment of an equitable and rational new world economic order should therefore be placed on the Committee's agenda as a matter of urgency.

2. In the 1970s, in accordance with the purpose set forth in the Charter of "the promotion of the economic and social advancement of all peoples", and in order to promote the establishment of a new world economic order, the United Nations had adopted a series of international instruments, including the Declaration and Programme of Action on the Establishment of a New International Economic Order (resolutions 3201 (S-VI) and 3202 (S-VI)) and the Charter of Economic Rights and Duties of States (resolution 3281 (XXIX)). The basic principles which must guide economic relations among States included the right of every country to choose its economic system and the road to development that it deemed most appropriate to its national conditions; the right of every country to permanent sovereignty over its natural resources and to have effective control of those resources and their exploitation; the right of every country to participate in international economic affairs on an equal footing; and the right to engage in international economic cooperation for development on an equitable and mutually beneficial basis. Another basic principle was that the developed countries should respect the needs of the developing countries and provide assistance to them without any political or military strings attached, and should give the developing countries preferential, non-reciprocal treatment in international economic cooperation in order to narrow the gap between North and South and promote the economic growth of the developing countries. In the opinion of his delegation, those principles were basically an extension of the internationally recognized principles of international law and of the purposes and principles of the Charter of the United Nations.

3. Some of the principles of the new international economic order were already in existence and were being progressively developed, and more and more countries were recognizing and accepting them. It was now necessary, therefore, to codify and gradually develop them. Differences of opinion as to the status and effectiveness of certain principles should not affect efforts

(Mr. Liao Jincheng, China)

to achieve the long-term goal of the codification and progressive development of the principles of international law relating to the new international economic order, as mandated by the Charter and approved by successive General Assembly resolutions.

4. With respect to the question of the appropriate forum for completing the process of codifying and progressively developing the principles of international law relating to the new international economic order, differences of opinion among delegations were understandable, given the complex nature of the political, economic and legal questions involved in that work. His delegation thought that a representative subcommittee should be established within the Sixth Committee to undertake that task. It hoped that a decision would be made concerning the procedural aspect of the question at the Committee's current session.

5. Mr. RODRIGUEZ (Venezuela) said that the process of social change currently under way throughout the world was providing the stimulus for evolution of the legal system. The issue of the development of principles and norms of international law relating to the new international economic order was closely linked to that new reality and therefore continued to occupy an important place in the codification and progressive development of international law in general. The purpose of that task was to establish principles which would facilitate the establishment of more just and balanced international economic relations, which was precisely what the developing countries had been advocating for decades.

6. His delegation reiterated its position, which had been communicated to the Secretary-General and was reflected in document A/46/352, that a working group should be formed within the Committee to study those norms and principles. Such a working group would be open-ended and would examine current principles and norms, particularly those resulting from the practice of United Nations organs, such as all the resolutions on the establishment of the new international economic order which, taken together, constituted the beginnings of a regime of international development law. Naturally, it would also study any new norms and principles that might arise in adapting the legal order to the new international situation.

7. Mr. VAN DE VELDE (Netherlands), speaking on behalf of the 12 States members of the European Community, said that the Twelve had repeatedly expressed their conviction that, thanks to the progress made in international economic cooperation, the special needs of developing countries were being taken increasingly into account. That had been particularly true in the past year, when important foundations had been laid within the framework of the United Nations for a more pragmatic international dialogue on economic cooperation. The Twelve were acutely aware of the needs and specific problems of the developing countries; they had participated wholeheartedly in that process and would continue to do so in the future.

(Mr. Van de Velde, Netherlands)

8. General Assembly resolution 44/30 had once again requested the Secretary-General to seek proposals from Member States concerning the most appropriate procedures for considering the analytical study prepared by the United Nations Institute for Training and Research (UNITAR) and submitted to the General Assembly at its thirty-ninth session. The Twelve had not submitted comments in 1991 and noted that few countries had done so. Their position on that subject was reflected in previous reports, notably in document A/41/536 in which they had indicated that the UNITAR study provided a valuable survey of the development and refinement of the principles and techniques adopted so far in the field of international economic cooperation, as well as of the different legal opinions that existed regarding the legal situation in that field. The survey had permitted the evaluation of progress and the gradual clarification of the principles and techniques of international economic cooperation.

9. With respect to the progressive development of the principles and norms of international law, the Twelve recognized that international law and practice would continue to develop in the area of international economic cooperation. The progress made so far had been based upon a variety of instruments, of which some were binding on the parties and others, although they reflected trends or mapped out directions, were not. They believed that an approach that took that distinction into account remained the most appropriate, because it offered the flexibility necessary to find solutions to the complex and changing problems encountered in the field of international economic relations.

10. Paragraph 3 of General Assembly resolution 44/30 recommended that the Sixth Committee should consider making a final decision on the future of that item at the forty-sixth session of the General Assembly. The Twelve did not consider it appropriate to undertake a codification process in that field, since they believed that the essential requirement for such a process had not been met, namely, a sufficient degree of identification and acceptance by the international community of legal principles and norms. It was significant that hardly any progress had been achieved thus far on such codification projects as those in the areas of transnational corporations and the transfer of technology. A flexible attitude towards cooperation appeared to be a more appropriate way of solving the problems involved.

11. Important foundations had been laid in 1990, within the framework of the United Nations, for a more pragmatic international dialogue. The results of the eighteenth special session of the General Assembly, the Second United Nations Conference on the Least Developed Countries and the International Development Strategy for the Fourth United Nations Development Decade should be cited in that context. The Twelve saw significant advantages in continuing the dialogue already taking place in other forums, and would therefore favour the elimination of that item from the agenda of the Sixth Committee, especially since the results of the dialogue were encouraging.

12. Mrs. ZAZOPULOS (Chile) said that the amazing political and social changes which had swept the world in recent years made it necessary to redefine the concept of the new international economic order to incorporate the new elements and trends shared by current economic systems. The fact that there was a trend in international trade towards the opening up of the economies of different countries meant that precise norms had to be established to enable the developing countries in particular to reap the benefits of that growth of trade.

13. It was therefore essential to begin work on improving existing codes of conduct and adopting new codes to supplement them. The norms thus adopted would have to guarantee all countries access to technological progress, since it was not possible to envisage a new international economic order without an appropriate mechanism for technology transfers. That issue was all the more significant because of its links to environmental protection. In that connection, it must be kept in mind that environmental issues should never be an obstacle to development, particularly in the developing countries.

14. The concept of the new international economic order included the notion of fairness and free access to markets. That was of particular importance to the developing countries, which hoped to receive equitable treatment for their products.

15. Her delegation felt that the elements she had mentioned should be included in the new definition of the international economic order. Accordingly, it endorsed the proposal to continue the process of the progressive development of the principles and norms of international law relating to the new international economic order through an intergovernmental working group set up within the Sixth Committee.

16. Mrs. SILVERA (Cuba) said that the item on the progressive development of the principles and norms of international law relating to the new international economic order had always been of interest to the majority of members of the Sixth Committee and that, despite the profound changes that had taken place in the world, those principles and norms remained completely valid.

17. The precarious economies of the third world countries were affected by the political, economic and social consequences of the unjust system of international economic relations maintained by certain industrialized countries. That was reflected in the weakness of the economic structures of the developing countries and testified to the systematic non-compliance with the principles and norms of the new international economic order. It was essential therefore to keep those principles and norms permanently under review in order to improve their development and effective application.

18. In its resolution 44/30, the General Assembly had recommended that the Sixth Committee should consider the possibility of making a final decision at its forty-sixth session on the question of the appropriate forum for completing the elaboration of the process of codification and progressive

(Mrs. Silvera, Cuba)

development of the principles and norms of international law relating to the new international economic order. Her delegation supported the establishment of a working group within the Sixth Committee to undertake that task, and suggested that the UNITAR study be used as a starting point.

19. The results of the voting on resolution 44/30 showed that the majority of Member States wanted to continue consideration of that topic and that practical measures must be taken to promote the development and codification of international law in that field.

20. She wished to recall that subprogramme 3 (Progressive development and codification of international law) of programme 9 (International law) of major programme II of the medium-term plan adopted by the General Assembly in its resolution 45/253 of 21 December 1990 set forth the activities to be carried out by the Secretariat with regard to the development of international law, which also included norms relating to the new international economic order.

21. Her delegation endorsed the statements made on that issue by the delegations of Brazil, Chile, China, Venezuela, and the United Republic of Tanzania.

22. Mr. SANDOVAL (Ecuador), speaking on behalf of the delegations of Bolivia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Mexico, Nicaragua and Peru, said that while the reasons which had led to the launching in the 1970s, of the debate on the issue of a new international economic order remained valid, very little progress had been made. In recent years, the international political situation had undergone dramatic changes which would inevitably bring with them profound changes in international economic relations. However, the new world situation had not brought about any substantial changes in the crisis situation which the developing countries had faced at the start of the debate and which they still faced at present. Economic conditions had in fact become more pressing and difficult. In Latin America in particular, the 1980s was considered a "lost decade".

23. In that context, new importance attached to the need to elaborate principles that would guarantee a transparent economic system favouring fair and equitable development, consolidating the right to growth and development, making it possible to overcome the distortions resulting from protectionism, escape clauses and restrictive trade practices, making debtors and creditors equally responsible for seeking solutions to the burning problem of external debt, and transforming in a positive sense an economic order from which justice and solidarity were absent.

24. It would be necessary to reformulate the item as originally conceived, since world circumstances had changed. Nevertheless, much that had inspired it remained valid: for example, the principles in the study by UNITAR, namely sovereign equality and the obligation to cooperate. The argument that the conditions that had given rise to the item no longer obtained was no

(Mr. Sandoval, Ecuador)

justification for its postponement or elimination, since inequalities remained that must be faced and resolved. The new international political order seemed to be characterized by greater harmony and fewer conflicts, but unless accompanied by an equitable economic system that took into account the just aspirations of the developing countries, it might not survive. Politics and economics were indissolubly linked. There could be no prospect of an atmosphere of harmony and cooperation if economic problems were swept to one side. If the impoverishment of the developing countries continued, new sources of tension could arise in the world. Disputes based on ideology might disappear, but there would be new confrontations resulting from hunger, despair and the indiscriminate exploitation of natural resources. The precarious balance reached with the ending of the conflict between East and West could well be replaced by an explosive confrontation between North and South.

25. For all those reasons, his delegation was in favour of setting up a working group within the framework of the Sixth Committee. The group should set itself realistic goals, analyse the prevailing economic situation, and draw up a set of principles and norms applicable to the changing conditions of the international economic order.

26. Mr. PIZA-ROCAFORT (Costa Rica) said he wholeheartedly supported the statement made by the representative of Ecuador on behalf of a group of Latin American countries. His own delegation was also in favour of setting up an intergovernmental working group within the framework of the Sixth Committee and believed that item 126 (Progressive development of the principles and norms of international law relating to the new international economic order) should remain on the agenda.

27. Since international law, like law in general, was inevitably limited by the laws of domestic and international economics, norms or principles that contradicted those laws could not be established without nourishing false hopes or changing the objectives being pursued. For example, it was not possible to lay down rules that would fix commodity export prices, nor could other States be compelled to buy or consume such products, or to sell their goods and technology for less or more than the price determined by the laws of supply and demand. Nor was it possible to fix interest rates and payment mechanisms for international debt by decree, nor could development be achieved by limiting or affecting the property rights of nationals or foreigners. Distortion of economic laws ended by producing the opposite effect to that intended.

28. What international law could do, however, was to encourage an effective legal framework that would guarantee compliance with the laws of international trade. Limits could be placed on protectionist norms and practices; efforts could be made to eliminate practices in restraint of international trade and tariff and non-tariff barriers; debtors and creditors could be made to share the responsibility for international indebtedness; if could be ensured that

(Mr. Piza-Rocafort, Costa Rica)

economic sanctions did not violate the principles of the sovereign equality of States, and that the treaties on free trade and customs unions currently being encouraged constituted decisive steps towards freedom of trade.

29. The developing countries recognized that at least 50 per cent of the problems that had hampered their development were their own responsibility, but the other 50 per cent rested with those countries which, while recommending the opening up of trade and restructuring, at the same time closed and distorted their own economies and thus hampered the progress of the developing countries.

30. In the past, the developing countries had advocated a system of protectionism based on the theory of import substitution and in protecting their own markets, which had led, in the case of Central America, to the establishment of a customs union designed to protect them from third States rather than open their own frontiers. The Central American clause of exclusion from most-favoured-nation treatment, which had been the exception (and consequently bore a restrictive interpretation), had become the general rule, thus removing all support from the most-favoured-nation clause. Currently, however, the Central American customs union was interested in opening the trade of the Central American countries to all nations, on the basis of the free trade agreements and their active participation in the GATT Uruguay Round. The Central American countries had embarked on a thorough restructuring of their economies with a view to the successful achievement of recovery and growth. Accordingly, they had considerably reduced their customs tariffs, dismantled other non-tariff protectionist measures, entered into negotiations on their external debt and sought a formula whereby they could continue to make payments through rescheduling and new loans. They hoped that the developed countries would take similar action in their turn, that they would abandon their protectionist policies, and that unilateral economic sanctions would give way to a multilateral system outlawing discriminatory practices.

31. His delegation did not fully share the tradition on which the item had originally been based nor did it support the 1974 Declarations, since some of the principles they contained were out of harmony with the principles by which it was currently inspired and with the development of international economic relations in the 1990s. However, some of the principles set out in the Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S-VI)), in the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX)) and in UNITAR's own study, remained valid, which meant that it was necessary to find a compromise between the illusion of the 1970s and the disenchantment of the 1980s. Since the current economic system was not wholly satisfactory, it was necessary to change some of the rules and legal principles on which it was based, or at least to reformulate them. Accordingly, for the reasons put forward by the representative of Ecuador on behalf of a number of Latin American delegations, the delegation of Costa Rica was in favour of setting up an intergovernmental working group within the framework of the Sixth Committee.

32. MR. SHESTAKOV (Union of Soviet Socialist Republics) said that, in his opinion, the principles and norms of international law in the field of economic relations could be an important component of a world legal system based on the principle of the rule of law in political life. The need for a system based on those principles and norms was evident in the interdependent world of the present day, and would become still more obvious in the future as economic cooperation developed world wide. The effectiveness of legal principles in international economic relations and in the development and enhancement of those relations on the basis of equal rights and democratization depended above all on their practical applicability and their acceptability to various groups of States. Given the differing and contradictory economic interests of the various groups of countries, it was difficult to reach a consensus on the concept of a new international economic order. Nevertheless, it was necessary to bear in mind the profound interdependence of the contemporary world and the obvious fact that it was becoming impossible to put off any longer the task of solving a series of deeply serious economic problems. Consequently, any developed or developing State had an objective interest in the adoption of principles and norms of international law in the field of economic relations that were mutually acceptable and aimed at achieving wide cooperation.

33. The Soviet Union, which was undergoing a period of radical economic reform and was about to commence its participation as a full member of the world economic community, considered it vital that the material and intellectual resources and the scientific and technical potential previously allocated to arms should be used for improving the living conditions of the population. However, while one of the priority issues was the conversion of the military-industrial sector to civilian uses, there were many other difficulties that had to be overcome during the establishment of an economic order that would ensure the security and development of all States. It was of crucial importance that the subject of the progressive development of the principles and norms of international law relating to the new international economic order should fall within the competence of the United Nations, and the Soviet delegation was prepared to consider specific proposals in that regard.

34. Mr. SAENZ de TEJADA (Guatemala) said that he wished to add a few comments to those already made by the representative of Ecuador on behalf of a number of Latin American countries. In connection with the comments made by the representative of the Netherlands on behalf of the member countries of the European Economic Community, that it would be more appropriate to consider the item before the Committee in another forum, his delegation was of the view that it would be very difficult currently to address in UNCTAD, or in other similar forums, the problem of the new international economic order from the legal perspective that was of interest to the developing countries. It was clear that market forces were constructing the new international economic order and that Governments believed that that development was positive, useful and advantageous. The delegations of the developing countries also shared the view that while market forces had an important role to play the question was

(Mr. Saenz de Tejada, Guatemala)

whether such forces could construct a just international economic order which took into account the interests of the developing countries. The proposal of the representative of Ecuador to establish an intergovernmental working group to consider the matter showed that the subject was no longer a source of conflict but provided instead an opportunity to continue dialogue and discussion, particularly in view of the valuable legal perspective of the Sixth Committee.

35. Mr. ROSENSTOCK (United States of America) said that, as the representatives of Ecuador, Costa Rica and other countries had observed, grave economic problems existed in the world. He wondered, however, whether it was logical to expect the Sixth Committee or a subsidiary body of the Sixth Committee to deal with the problems of debt and commodities, or other problems which fell within the competence of the Uruguay Round. He also wondered whether there was sufficient agreement on questions of policy for the attempt to codify legal norms in that area to be a realistic, or even prudent, objective. Moreover, it might be asked whether such an approach would promote progress or whether, on the contrary, it would bring disagreements out into the open, thereby preventing progress.

36. In the late 1960s, the 1970s and subsequent years, the principle of permanent sovereignty over natural resources had given rise to heated debates; while some had used the principle as a rallying cry, others had insisted that what was really at issue was expropriation, which could be acceptable if it was non-discriminatory, if it was in the public interest, and if it was accompanied by prompt, adequate and effective compensation. Both sides had maintained their positions and no agreement had ever been reached. The General Assembly had managed to assuage the parties with its resolution 1803, which referred to permanent sovereighty over natural resources under international law, but eventually the debate on the subject had again broken out. Life had continued its course, bilateral agreements on investment had been signed, problems arising from such issues had been taken to arbitration and, in recent years, the conclusion seemed to have been reached that many of the issues in question, if approached individually and in concrete terms, were not as impossible to settle as they had appeared during theoretical discussions. In his view, the same would probably occur with many of the issues currently before the Committee.

37. For example, in the statement made on behalf of the member countries of the European Economic Community, it had been quite correctly indicated that there was no agreement on the issue of the transfer of technology. Another speaker had referred to the importance of technology to environmental issues. In that regard, it should be noted that in previous discussions on environmental questions, the term "transfer of technology" had generally been replaced by "technical cooperation"; as a result, the preparatory work for the United Nations Conference on Environment and Development, due to be held in 1992, was yielding rather more constructive and concrete results than might have been the case if the inherently controversial term "transfer of technology" had been retained.

(Mr. Rosenstock, United States)

38. Even assuming that there were legal questions in the economic field which it would be useful to examine, under no circumstances would the appropriate forum for doing so be the Sixth Committee or a subsidiary body of the Sixth Committee, nor would it be appropriate to use the concept of the new international economic order as a point of departure for considering subjects on which it was hoped to make genuine progress. The concept of "the new international economic order" had given rise to the worst confrontations of the 1970s, which had been a difficult period for both East-West and North-South relations. Many resolutions had been adopted by large majorities, while a minority had put forward different points of view and the process, in the long run, had led nowhere. For that reason, in his view, if there was a genuine desire to approach certain problems constructively, it would be extremely unwise to attempt to do so under a heading which was a symbol only of discord, particularly at a time when the world appeared readier than ever before to reach agreement.

AGENDA ITEM 134: CONSIDERATION OF THE DRAFT ARTICLES ON MOST-FAVOURED-NATION CLAUSES

39. The CHAIRMAN recalled that in its decision 43/429 of 9 December 1988, the General Assembly had taken note of the complexity of codification or progressive development of the international law on most-favoured-nation clauses and had considered that additional time should be given to Governments for thorough study of draft articles and for determining their respective positions on the most appropriate procedure for future work, including the forum for further discussion. He also drew the Committee's attention to the fact that in its two most recent consecutive resolutions (resolutions 38/127 and 40/65), adopted in 1983 and 1985, respectively, the General Assembly had requested the Secretary-General to invite Member States, interested organs of the United Nations, as well as interested intergovernmental organizations to submit observations on the substance of the draft articles and to invite Member States to comment on the most appropriate procedure for completing work on most-favoured-nation clauses and on the forum for future discussion, with a view to taking a final decision on the procedure to be followed. He therefore hoped that the Committee would find a way of adopting a final decision on the item or of deferring consideration of the item, if it so wished, until such time as the General Assembly was in a position to take a final decision on the matter.

40. Since there was no list of speakers on the subject, which confirmed the impression of a certain lack of interest in it, he wished to announce the cancellation of the debate on the item.

AGENDA ITEM 129: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-FOURTH SESSION (A/46/17)

41. Mr. KAZUAKI SONO (Chairman of the United Nations Commission on International Trade Law) referring to the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, which

(Mr. Kazuaki Sono)

had been adopted in April of the current year, said that it had been signed by three States - Spain, the Philippines and Mexico - and would remain open for signature until 30 April 1992.

42. Introducing the report of the Commission on the work of its twenty-fourth session (A/46/17), he said that the question of the draft Model Law on International Credit Transfers had arisen following the preparation of the UNCITRAL Legal Guide on Electronic Funds Transfers, which identified global issues left in a legal vacuum. Although the Model Law would also govern traditional paper-based credit transfers, the Model Law project had been promoted by the Commission because of its concern about the legal uncertainty caused by the rapid development of funds transfers through electronic means. Electronic funds transfers already accounted for the major part of global movement of funds and no national law could adequately cover all the aspects of the process. Some $1.5 thousand billion a day were transferred through New York City alone, although perhaps only one fortieth went for payments related to international trade. With the free movement of capital beyond national boundaries, there was an urgent need for a set of uniform rules for the funds transfer system.

43. At its recent session, the Commission had made considerable progress on the basis of the draft text of the Working Group on International Payments. It had completed consideration of 15 out of 18 draft articles. That was an area in which only the United States had a set of detailed rules in the new Article 4A which had recently been added to the Uniform Commercial Code. Those rules had naturally influenced the UNCITRAL project. He was confident that the Commission would adopt the Model Law at its next session.

44. The Commission had received reports from the working groups and the secretariat on the progress of other projects currently being undertaken. It was the practice of the Commission, once a project had been referred to a working group, not to discuss the merits of the draft text until the working group submitted the final text. The working groups were currently composed of all States that were members of the Commission and all other States and interested international organizations were invited to participate in the deliberations. All three working groups were currently considering important subjects, including a draft model law on procurement, a uniform law on guarantees and stand-by letters of credit and a legal guide on international countertrade.

45. The Commission had examined a report submitted by the secretariat on the legal problems of electronic data interchange (EDI), which contained suggestions for the preparation of a general framework providing a basic set of legal principles and rules governing communications through electronic data interchange, and for the preparation of a standard communications agreement for world-wide use in international trade. The Commission had decided that a session of the Working Group on International Payments should be devoted first to identifying the legal issues and then to considering possible statutory

provisions. The Working Group would report to the Commission at its next session on the desirability and feasibility of undertaking further work and the Commission would act on the working group's recommendations.

46. Regarding the status of legal texts resulting from the work of the Commission, the United Nations Convention on the Carriage of Goods by Sea (the Hamburg Rules) had received accessions from Guinea and Malawi, bringing the total number of parties to 19. The twentieth ratification was expected in the very near future, which would bring the Convention into force.

47. Seven more States, Bulgaria, Canada, Guinea, the Netherlands, Romania, Spain and the Soviet Union, had become parties to the United Nations Convention on Contracts for the International Sale of Goods, which had been in force since 1988; the total number of parties was now 32. The Convention, which was the product of pragmatic thought and negotiation, had attracted attention to the main issues of concern in the law of international contract and had made a valuable contribution to the reorientation of jurisprudence.

48. The Convention on the Limitation Period in the International Sale of Goods ("the Limitation Convention") with its Protocol, which was also in force, now had 11 parties following the accession of Guinea. Unlike the Sales Convention, the Limitation Convention consisted of mandatory rules, which might partly explain the slower speed of ratification.

49. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards now had 84 parties, following the accession of Côte d'Ivoire and Guinea. Legislation based on the UNCITRAL Model Law on International Commercial Arbitration had now been enacted in Scotland.

50. With regard to the Commission's promotional activities, it should be recognized that, while the Commission and the individual delegations participated in those activities, the main burden was borne by the secretariat, which had carried out an extensive programme of training and assistance, one of the main objectives being the promotion of UNCITRAL legal texts.

51. In September 1990 the Comisión Centroamericana de Transporte Marítimo (COCATRAM), in cooperation with the UNCITRAL secretariat, had organized a series of seminars on the Hamburg Rules in the member countries of COCATRAM (Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica). Some participants in the seminars had asked for a meeting of experts from the five Central American republics to be organized to consider action that might be taken in regard to the Hamburg Rules. In response to that request, a meeting in Puerto Cortés, Honduras, had been organized in March 1991. That meeting had adopted the "Declaration of Puerto Cortés" in which it was stated that the Central American countries should exert a strong effort to bring the Hamburg Rules into force as soon as possible.

(Mr. Kazuaki Sono)

52. A regional seminar on international trade law had been held in Douala, Cameroon, in January 1991. The seminar had been organized for the francophone States of North and West Africa with the collaboration of the Government of Cameroon and with financial assistance from the Governments of Canada, France and Luxembourg.

53. A subregional seminar on international trade law had been held in Quito, Ecuador, in February 1991. The seminar had been organized by the Andean Pact and by the Andean Federation of Users of Transport Services and co-sponsored by the UNCITRAL secretariat. One of the purposes of the seminar had been to inform the private sector in the countries of the Andean region of the importance of the Hamburg Rules and the United Nations Convention on International Multimodal Transport of Goods prepared by the United Nations Conference on Trade and Development (UNCTAD).

54. The fourth symposium on the work of UNCITRAL had been held in Vienna on the occasion of the Commission's twenty-fourth session. Funds had been available for the awarding of 30 scholarships to cover the travel expenses of participants from developing countries.

55. The secretariat expected to intensify its efforts to organize or co-sponsor seminars and symposia on the work of UNCITRAL. It should be remembered how successful had been the seminar held in Conakry, Guinea, in March 1990, which a year later had resulted in accession by Guinea to all the UNCITRAL Conventions. The following month a seminar would be held in Suva, Fiji, in cooperation with the South Pacific Forum, with financial assistance from the Government of Australia, and in conjunction with the annual Australian Trade Law Seminar.

56. A matter of concern to the Commission was the extent to which developing countries participated in its work. Participation called for travel to Vienna or New York, and developing countries were often unable to send experts to meetings of the Commission and, in particular, of its working groups. That was not due to any lack of interest but rather to a lack or scarcity of funds. In resolution 45/42 of 28 November 1990, the General Assembly had requested the Secretary-General, in consultation with the Commission's secretariat, to prepare a report with a view to analysing possible ways by which assistance could be given to the developing countries. That report, which would soon be submitted to the General Assembly, discussed three options. One option would be to provide assistance only to the least developed countries, in line with the current arrangements for the regular sessions of the General Assembly and the recommendations of the Advisory Committee on Administrative and Budgetary Questions, endorsed by the General Assembly in resolution 43/127, section IX, of 21 December 1988.

57. The second option would be to give assistance to all developing countries that were members of the Commission. That would have a wider impact, but the amount of assistance needed might be regarded as prohibitive. A more limited

option might be to give assistance to one half of the States from each of the regional groups comprising developing countries, namely, Asian, African and Latin American States. The States could be selected by the General Assembly every three years, in connection with the election of new members of the Commission. The current arrangements for the General Assembly and for the functional commissions of the Economic and Social Council could serve as a model. Assistance might cover travel expenses, but not subsistence expenses, for one representative of each State selected.

58. Lastly, with reference to the United Nations Decade of International Law, the Commission had decided, in 1991 on the proposal of the secretariat, to hold a Congress on International Trade Law in conjunction with its twenty-fifth session. The session was an appropriate occasion for reflecting upon the accomplishments achieved in the progressive unification and harmonization of international trade law over the previous 25 years and to consider the future direction of the law in that area and the proper gearing of the Commission's programme of work to the changing pattern of global economic activities. UNCITRAL hoped that all States and international organizations concerned would send delegates to the Congress, which would provide an opportunity to consider ways of further strengthening the contribution of the Commission.

59. Mr. VAN DE VELDE (Netherlands) said that a substantial part of the UNCITRAL report dealt with the draft Model Law on International Credit Transfers prepared by the Working Group on International Payments. Even though the draft text had been favourably received, the Commission had regrettably not been in a position to adopt it. On the other hand, the decision to continue considering the draft text at the twenty-fifth session offered an opportunity to hold consultations and reach a compromise on the remaining issues, which included the question of the liability for interest of a receiving bank other than the beneficiary bank. The importance of guarantees and stand-by letters of credit was steadily increasing and consequently their overall volume had increased substantially. Between 1980 and 1990, for instance, the volume of guarantees and stand-by letters of credit issued by Netherlands banking institutions, measured in financial terms, had doubled. The growth was partly due to the fact that such instruments could be used to guarantee all kinds of transactions, both financial and non-financial. Consequently, the work done by the Commission to prepare a uniform law on the matter was most welcome. Furthermore, as indicated in the report, the Working Group on International Contract Practices had requested the secretariat to consult with the Hague Conference on Private International Law on possible methods of cooperation in the field of conflicts of law and jurisdiction in the uniform law. His Government, which supported that request, was in favour of establishing a mechanism for cooperation on the matter with the Hague Conference. In that context, one possibility to be considered would be a joint meeting of the Hague Conference and UNCITRAL or its Working Group on International Contract Practices.

(Mr. Van de Velde, Netherlands)

60. With regard to the holding of seminars and symposia, his delegation also favoured cooperation with other international organizations working in the field of harmonization and unification of law, such as the Hague Conference on Private International Law and the International Institute for the Unification of Private Law (UNIDROIT).

61. Concerning the legal issues raised by the increasingly widespread use of electronic data interchange (EDI), the preparation of a standard agreement, as discussed in chapter VI of the report, would be very useful. Of equal importance would be the adoption of provisions regarding the use of terms in communications agreements and regarding the replacement of negotiable documents of title by EDI messages.

62. The growing acceptance of the UNCITRAL Conventions showed the importance of the contribution the Commission was making to international trade law. Three States had signed the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade immediately after it was adopted at a diplomatic conference held in Vienna in 1991. His delegation, although it subscribed to the objectives of the Convention, had doubts about the scope of application of that instrument in view of the diversity in local conditions and the variety in services offered by terminal operators in different countries. The Convention implied a broadening of the liability of such operators, which might possibly increase the cost of operation of transport terminals. That consideration was all the more important in that, in some instances, the operator could not invoke the articles that made it possible to limit his liability. In 1990, the Netherlands had ratified the United Nations Convention on Contracts for the International Sale of Goods. That had a certain historic significance since it implied a denunciation of the Hague Conventions relating to a Uniform Law on the International Sale of Goods and relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, of which the Netherlands was the depositary. The Netherlands was currently recodifying its civil and trade law, which heightened its interest in the valuable work done by UNCITRAL. The desirability of ratifying the United Nations Convention on International Bills of Exchange and International Promissory Notes would be considered within the framework of that process of recodification.

63. With regard to chapter X of the report, his delegation reserved its position on the question of the assistance which could be given to developing countries that were members of UNCITRAL, and in particular to the least developed countries, so that they could attend Commission meetings.

64. His delegation noted with appreciation the UNCITRAL proposals for the United Nations Decade of International Law. In that connection the idea of organizing a Congress on International Trade Law, to be held as an integral part of UNCITRAL's twenty-fifth session, was interesting. It would make it possible to study not only what had so far been achieved in the progressive unification and harmonization of international trade law over the past 25 years, but also the needs of the next 25 years.

65. Mr. FERRARI-BRAVO (Italy) expressed his delegation's satisfaction at the adoption of the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade. Italy had always been in favour of uniform rules concerning the liability of operators of transport terminals for the loss of, damage to or delay in handing over goods which were in their charge and which were not covered by other conventions governing various modes of transport. The scope of the new Convention was wider than existing national legislation, since it was not restricted to warehousing, but also covered all the additional terminal operations performed in connection with the transport of goods. It was to be hoped that the Convention would receive a favourable reception and enter into force in the near future together with another important instrument prepared under the auspices of UNCITRAL, namely, the United Nations Convention on the Carriage of Goods by Sea ("the Hamburg Rules").

66. UNCITRAL's twenty-fourth session had focused on the draft Model Law on International Credit Transfers prepared by the Working Group on International Payments. The discussion had confirmed that the matter was extremely complex and that there were sharp differences of opinion not only between the various countries but also between the representatives of banking circles and of customers in various countries. He hoped that it would be possible to agree on the final version of the Model Law at UNCITRAL's 1992 session.

67. His delegation stated its appreciation of the progress made by the two Working Groups entrusted with preparing, respectively, a draft model law on procurement and a draft uniform law on guarantees and stand-by letters of credit.

68. He noted with satisfaction that the Working Group on International Payments had recently completed the study of the draft chapters of the legal guide on drawing up countertrade contracts, which would enable UNCITRAL to examine and possibly adopt the text of the instrument at its 1992 session. His delegation supported the decision to devote that same session of the Working Group to identifying the legal issues involved in connection with electronic data interchange (EDI). Priority should be given to examination of the various problems relating to the formulation of contracts by electronic means and to the replacement of negotiable documents of title, more particularly transport documents, by EDI messages. Due consideration should also be given to the desirability and feasibility of preparing standard communications agreements for use in international trade.

69. The legal instruments elaborated by UNICTRAL were becoming more and more widely adopted. In particular the United Nations Sales Convention of 1980 was in the process of becoming a universally accepted instrument, the importance of which for the future development of international trade law could hardly be overestimated. It still remained to be seen, however, to what extent it would be possible to ensure uniform interpretation and application of the Convention by the different national courts and by international arbitrators. In that

(Mr. Ferrari-Bravo, Italy)

connection the decision to create a reporting system through national correspondents might be extremely helpful. He noted with satisfaction that more and more States were represented at the annual meetings of the national correspondents, and that, as a result of the invaluable assistance provided by the UNCITRAL secretariat, the first report on national decisions so far rendered in application of the United Nations Sales Convention would soon be issued.

70. He stated his delegation's appreciation at the work carried out by the secretariat of UNCITRAL in 1990 in connection with the training and assistance programme. The organization of seminars by the secretariat and its participation in the seminars, conferences and courses organized by other organizations to consider UNCITRAL legal texts was helping to bring about an ever-increasing awareness of the work of the Commission. Further, the secretariat might consider the possibility of cooperating in the holding of seminars and symposia with other international organizations working in the field of the harmonization and unification of law, such as the United Nations Institute for the Unification of Private Law (UNIDROIT) and the Hague Conference on Private International Law.

71. His delegation supported the idea of organizing the Congress on International Trade Law, to be held in New York in May 1992, in conjunction with the Commission's twenty-fifth session. The Congress would provide an opportunity to consider achievements in the unification of international trade law over the past 25 years and the needs anticipated over the next 25 years.

72. Mr. FUKUKAWA (Japan) noted the important contribution made by UNCITRAL to the unification and harmonization of laws relating to international business transactions. The Commission had a tradition of conducting its work in a pragmatic manner, which, he trusted, would continue.

73. It was gratifying that UNCITRAL had considered almost all of the draft Model Law on International Credit Transfers and that agreement had been reached reflecting a balance between the various points of view. While there was growing use of credit transfers instead of bills of exchange or cheques as a means of making international payments, there was a divergence of views among various countries on the matter. Accordingly, it would be necessary to reach a compromise that was acceptable to the various countries, which would not only facilitate such transactions but enhance the reputation of UNCITRAL as the central organ in the unification of private law. Japan hoped that the Commission, at its 1992 session, would examine the remaining articles of the draft and adopt the Model Law.

74. His delegation appreciated the efforts of the Working Group on International Contract Practices in preparing a uniform law on guarantees and stand-by letters of credit. Guarantees, which were frequently used in international business transactions, had led to many legal disputes. It was therefore especially important that the uniform law should reflect the interests of all the parties concerned in a balanced way.

(Mr. Fukukawa, Japan)

75. His delegation, which highly appreciated the work of the Working Group on the New International Economic Order, was of the view that domestic legislation should be taken into account in examining the draft model law on procurement. He also expressed appreciation at the efforts made by the secretariat of UNCITRAL, through regional and national seminars, to provide training and assistance on conventions drafted by UNCITRAL.

76. Japan welcomed the decision to organize a Congress on International Trade Law in conjunction with the United Nations Decade of International Law. In that connection it was to be hoped that a fruitful discussion would take place on such issues as the ways and means of achieving unification of private law, with the participation of a wide range of specialists.

The meeting rose at 5.35 p.m.