



SUMMARY RECORD OF THE 7th MEETING

Chairman: Mr. GOERNER (German Democratic Republic)

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 127: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS SEVENTEENTH SESSION (continued) (A/39/17)

1. Mr. HAYASHI (Japan) said that the harmonization and unification of laws relating to business transactions was highly desirable for the development of international trade and other economic relations and that UNCITRAL had made a significant contribution to that end in the field of international trade law. His Government, for its part, would spare no effort in extending its full support to the Commission and valued highly the Commission's pragmatic approach of discussing questions from the juridical and technical viewpoints and avoiding, as much as possible, abstract debate on policy matters.
2. With regard to the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Convention on International Cheques, the unification of law in that field had faced considerable difficulties as a result of the divergences reflected in different national legal systems. The Commission had managed to reach agreement on various issues on which there had been wide differences of opinion, thus laying down the basic framework for dealing with those issues at future sessions of the Working Group on International Negotiable Instruments. His delegation considered that agreement to be a great achievement and hoped that, in the near future, the Commission would complete revised draft Conventions which were acceptable to a greater number of States.
3. On the question of electronic funds transfers, his delegation commended the work done by the UNCITRAL Study Group on International Payments in preparing a legal guide to that question and was satisfied with the progress made in that new field in which there were few precedents. With regard to the question of international commercial arbitration, it welcomed the Commission's adoption of the Arabic and Chinese texts of the UNCITRAL Arbitration Rules, which would guarantee the possibility of their even more widespread use. With regard to the draft model law on international commercial arbitration, which had been highly acclaimed in Japan by arbitration experts and scholars of procedural law, his delegation welcomed the Commission's decision to consider that text at its next session, in the light of comments received from Governments and international organizations. It hoped that the Commission would prepare a model law of a practical nature which would be acceptable throughout the world.
4. With regard to the Working Group on the New International Economic Order, which had continued its work on the legal guide on drawing up contracts for the construction of industrial works, his delegation reiterated its view that the Working Group should maintain the same fundamental objective as the Commission itself, namely the harmonization and unification of international trade law from the juridical and technical viewpoints, and conduct its work with the participation of experts. It must also continue its technical study of specific contract clauses, avoiding abstract debate on abstract notions. On that understanding, Japan intended to co-operate actively with the Working Group in the future.

(Mr. Hayashi, Japan)

5. He noted the Commission's decision to recommend the use of the Uniform Customs and Practice for Documentary Credits, as revised by the International Chamber of Commerce, and other decisions such as that to study, in response to a request by the Economic Commission for Europe and the United Nations Conference on Trade and Development, legal problems arising out of the use of automatic data processing in international trade. His delegation considered it highly valuable for various international bodies to co-operate in the work of unifying international trade law. At the same time, it welcomed the fact that UNCITRAL was playing the central role in such co-operative efforts and hoped that it would continue to do so in both its present and future work.

6. Finally, his delegation joined the Observer for the Republic of Korea in paying tribute to the memory of Mr. Quentin-Baxter, the eminent New Zealand jurist and leading figure in international law, who had died recently.

7. Mr. CEDE (Austria) observed that, since its establishment in 1966, UNCITRAL had developed into a highly efficient body. Judging by its achievements and the high technical quality of its work, it was without doubt one of the more successful institutions within the United Nations system. That was particularly important at a time when lack of efficiency was often mentioned, not always without justification, by those who criticized the United Nations. In that respect, UNCITRAL provided an excellent example of how an international organization could deal constructively with matters of ever-increasing universal interest and relevance.

8. From a longer-term perspective, however, UNCITRAL was faced with increasing obstacles in performing its mandate of promoting the codification of international law and recommending draft articles which might be developed into legally binding international instruments. It appeared that the era of codification was definitely over; it was no longer possible to view the elaboration of a multilateral convention as the sole possible alternative and other options, such as legal guides or model laws, must be taken into account.

9. The conceptual differences between the system of Anglo-Saxon law and that of Roman law, as well as the hesitancy of some States to accept a convention on a particular matter, had made themselves felt in international trade law. That had been the case, for instance, with attempts to adopt a generally acceptable resolution on the action to be taken following UNCITRAL's adoption of the text of Uniform Rules on Contract Clauses for an Agreed Sum Due upon Failure of Performance. The wording of the resolution finally agreed to in the Sixth Committee had been vague, to put it mildly.

10. The prospects for UNCITRAL were nevertheless bright and the progress made on the model law on international commercial arbitration and on the legal guide on drawing up contracts for the construction of industrial works was encouraging. In future, the international business community and States would doubtless resort to those texts, even though they were not obliged to do so, if they reflected a fair and balanced account of existing international trade practices.

(Mr. Cede, Austria)

11. In the longer term, there might well be a shift away from UNCITRAL's more traditional work of codification towards that of systematizing highly technical matters such as the revolutionary developments in data processing and their impact on international trade law.

12. In conclusion, Austria, as host country to the International Trade Law Branch, was particularly well-placed to observe the Branch's very efficient operation and believed that everything possible should be done to support and strengthen that Secretariat unit.

13. Mr. PAN WEIHUANG (China) said that the draft Convention on International Bills of Exchange and International Promissory Notes was a balanced product of different legal systems. It took account of international law and current practice with regard to negotiable instruments and laid down a sound basis for the unification of international law in that area. The result had been to avoid conflicts among the different laws governing negotiable instruments. His delegation endorsed the approach adopted by UNCITRAL to the formulation of the draft Convention, as well as the idea of postponing the elaboration of the draft Convention on International Cheques.

14. UNCITRAL had acted wisely in deciding to send the text of the draft model law on international commercial arbitration, prepared by the Working Group on International Contract Practices at its seventh session, to Governments and interested organizations for their comments. His delegation believed that UNCITRAL should concentrate on the draft model law at its eighteenth session, with a view to its final adoption, and that the model law should include a preambular part in which reference was made to mediation procedure.

15. His delegation welcomed the work done by the Working Group on the New International Economic Order with regard to the preparation of a draft legal guide on drawing up contracts for the construction of industrial works. UNCITRAL had rightly pointed out in its report that the work of the Working Group should be based on the fundamental principle of the new international economic order and should, in particular, satisfy the needs and aspirations of the developing countries.

16. At its seventeenth session, UNCITRAL had also adopted the Arabic and Chinese texts of the Arbitration Rules, thus facilitating their extensive application, a fact which was a source of satisfaction to his delegation.

17. The development of foreign trade, the promotion of economic and technical exchange and co-operation with other countries were China's guiding principles in building a modern socialist country. In 1983 the total value of China's imports and exports had reached the level of \$US 40.7 billion, or almost double that of 1978. Of that total, exports had represented \$22.2 billion, or an increase of 130 per cent over the level for 1978. The Chinese Government attached great importance to the work of UNCITRAL and was ready to work with other Governments in exploring issues concerning the unification, harmonization and development of international trade law in a manner consistent with the principles of the new international economic order.

18. Mr. ABDEL-RAHMAN (Sudan) commended UNCITRAL for the valuable efforts it had made to unify international trade law and expressed support for the idea of continuing to conduct studies on the preparation of a draft Convention on International Bills of Exchange and International Promissory Notes and a draft Convention on International Cheques. Both drafts represented a compromise between the Anglo-American system and the systems based on the 1930 and 1931 Geneva Conventions. The fact that five decades had passed since the ratification of the Geneva Conventions, combined with the complexity of international banking transactions, meant that the Conventions must be reconsidered with a view to solving the problems that arose on a sound legal basis. Account must be taken of domestic legislation in order to ensure that the draft Conventions would be ratified by the greatest number of States possible.
19. His delegation believed that additional studies should be conducted on problems relating to electronic funds transfers and was of the view that the Secretariat had already submitted a valuable preliminary study.
20. In due course his delegation would submit its observations on the draft model law on international commercial arbitration. Appropriate criteria must be laid down for the implementation of the model law. The first section of the model law should define the scope of the law, which should cover all trade relations. The preamble should refer to conciliation procedures.
21. With regard to the draft legal guide on drawing up contracts for industrial works, his delegation noted with satisfaction the work carried out by the Working Group on the New International Economic Order and supported the ideas set forth in paragraphs 116 to 118 of the report.
22. His delegation recognized the importance of the work carried out by UNCITRAL in the area of training and assistance and hoped that further symposia and seminars, which helped to publicize the Commission's work, would be held in Africa.
23. Mr. PHOLO (Lesotho) said that his delegation welcomed the work carried out by UNCITRAL on the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Convention on International Cheques. It also noted with satisfaction the Commission's work on the draft model law on international commercial arbitration and the UNCITRAL Arbitration Rules. His country was carrying out an extensive exercise of updating and amending the statutes on commercial arbitration, in which due account was being taken of the UNCITRAL Arbitration Rules.
24. His delegation also wished to commend UNCITRAL for its work on the liability of operators of transport terminals, the new international economic order, particularly contracts for industrial works, the revision of the Uniform Customs and Practice for Documentary Credits, and barter and barter-like transactions.
25. With regard to the legal aspects of automatic data processing and electronic funds transfers, those were questions on which the Lesotho courts had not yet pronounced. His delegation wished to appeal to UNCITRAL to work towards achieving



(Mr. Pholo, Lesotho)

the widest possible dissemination of all information on those new legal dimensions of the field of trade law. For a long time, the countries of the third world had been under colonial rule and had therefore been unable to participate in the progressive development of international law. However, even though some new legal concepts were already widely accepted and had been converted into legal norms in the developed countries, the other countries should not be left behind in the process of the development and subsequent codification of the concepts in question.

26. UNCITRAL must continue its admirable work of conducting symposia and seminars in the countries of the third world; his delegation would appreciate it if one or two seminars could be held in southern Africa, preferably in Lesotho.

27. Mr. DROUSHIOTIS (Cyprus), referring to the question of the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Convention on International Cheques, said that UNCITRAL had a difficult task in harmonizing the laws governing international negotiable instruments, since the field in question was highly complex and one in which there were many differences between the various legal systems. His delegation hoped that UNCITRAL would complete consideration of the revised draft Convention and adopt it in 1985 when the Working Group on International Negotiable Instruments submitted its report.

28. Electronic funds transfers was a topic of increasing importance owing to the spread of technology in the field in question. The draft chapters of the legal guide prepared by the Secretariat represented an excellent beginning for the work in that field, and it was to be hoped that UNCITRAL would continue its work on the topic.

29. For the time being his delegation would not make any comments on the draft model law on international commercial arbitration, since the draft model law had been transmitted to Governments for their observations. The topic of the new international economic order was extremely important to the developing countries. UNCITRAL had shown good judgment in deciding to prepare a draft legal guide on drawing up contracts for industrial works. The Commission's work on the topic constituted a valuable contribution to the achievement of the objectives of the new international economic order. His delegation hoped that Governments would note the suggestion made in the Committee concerning the desirability of greater participation in the deliberations of the Working Group.

30. UNCITRAL had taken the right course of action in entrusting the Working Group on International Contract Practices with the task of preparing uniform rules on the liability of operators of transport terminals. That work was the logical outcome of its work in the field of the carriage of goods by sea, which had resulted in the Hamburg Rules of 1978.

31. The Commission's co-ordinating role was an essential element of the unification and harmonization of international trade law. The work of UNCITRAL in the field of training and assistance was particularly important for the developing countries, and his delegation wished to express its gratitude to the Governments and organizations that had conducted symposia and seminars in 1983 and 1984.

32. Mr. KAHALEN (Syrian Arab Republic) said that in preparing uniform rules on international trade law, UNCITRAL was carrying out valuable work with a view to facilitating and promoting trade relations, as could be seen from the large number of international conventions in whose preparation it had been involved and that had been adopted under the auspices of the United Nations. The importance of the Commission's work could be assessed through a comparison with the activities of some countries that were designed to set up obstacles to international trade flows.

33. It would be premature to commend UNCITRAL for its achievements, since highly complex subjects still had to be dealt with and a number of members of UNCITRAL were not participating fully in its work. His delegation would confine itself to making a number of observations on what are regarded as the key aspects of the report. With regard to the texts of the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Convention on International Cheques, he wished to draw attention to the fact that some provisions were difficult to understand. They must therefore be worded more precisely in order to bring them into line with customs and practice in international trade and to prevent them from giving rise to erroneous interpretations. It should be pointed out, in that connection, that the provisions of the 1930 and 1931 Geneva Conventions which already constituted uniform laws on the issue in question, had become outdated and that it would be no simple matter to adapt them to current developments in international trade relations. It would perhaps be preferable to draft an entirely new text.

34. With regard to the draft Convention on International Cheques, the Syrian delegation supported the idea of postponing consideration of the question, especially in view of the increasingly widespread use of electronic funds transfers, a topic which seemed to have priority at the moment. His delegation agreed with the decision of UNCITRAL to prepare a guide on the legal problems arising out of electronic funds transfers, as a basis for the preparation of uniform rules in the future. Concerning the draft model law on international commercial arbitration, he commended the efforts made by UNCITRAL and its working group to finalize the instrument, which would serve to facilitate the furtherance of trade relations between countries. He also considered it opportune for Governments to be able to present their observations and comments with a view to the definitive formulation of a uniform law.

35. As far as the liability of operators of transport terminals was concerned, the Syrian delegation supported the decision of UNCITRAL that the Working Group on International Contract Practices should take up the task of drafting uniform rules on the basis of the UNIDROIT preliminary draft convention and the detailed report of UNCITRAL itself.

36. Concerning the draft legal guide on drawing up contracts for industrial works, he was of the opinion that it would help to broaden the scope of international commercial relations; however, he pointed out that balanced solutions must be sought with a view to overcoming existing obstacles by means of clear-cut provisions that could serve as a basis in drawing up such contracts.

(Mr. Kahalen, Syrian Arab Republic)

37. His delegation pledged its full support for UNCITRAL's work in co-ordinating activities with other international legal organizations, such as the Asian-African Legal Consultative Committee, the United Nations Conference on Trade and Development (UNCTAD) and UNIDROIT, and especially its co-operation with the International Chamber of Commerce. The results of that co-operation were obvious.

38. The Syrian delegation supported UNCITRAL's recommendation that its agenda should include a priority item devoted to the legal problems arising out of electronic funds transfers.

39. The Syrian Arab Republic fully supported the efforts being made by UNCITRAL to promote assistance and training in the context of international symposia and seminars, and expressed the wish that such activities might be carried out in developing countries. It also approved of the idea that publications should be issued on the results of UNCITRAL's work.

40. Mr. LEE (Observer for the Republic of Korea) commended UNCITRAL for the valuable work it had performed for the harmonization and unification of international trade law, despite the different economic and legal systems of States. The Republic of Korea had participated in the work of the seventeenth session of UNCITRAL and of its various working groups and pledged to continue its fullest co-operation with the Commission in the years ahead.

41. Although opinion was divided on whether further work in the field of international payments and negotiable instruments was justified, the Commission had been able to focus its efforts on substantive discussion of the two draft conventions on international payments. In that respect, he welcomed the decision that further work on the subject should concentrate on the draft Convention on International Bills of Exchange and International Promissory Notes and that work on the other draft should be postponed.

42. In the view of his delegation the most significant development of the year had been the completion of the draft model law on international commercial arbitration. His delegation wished to support the speedy adoption of a model law which took into account the special interests of developing countries. In that connection his delegation fully agreed with UNCITRAL's decision to consider, at its next session, the draft text of a model law on international commercial arbitration.

43. His delegation welcomed the decision of UNCITRAL to begin the work of formulating uniform legal rules on the liability of operators of transport terminals by assigning the task to the Working Group on International Contract Practices, which was sufficiently broad to accommodate the different views on the subject.

44. His delegation wished to express its appreciation to the Working Group on the New International Economic Order for the progress made at its previous session, since it attached great importance to the legal guide on drawing up contracts for industrial works, currently under consideration by the Working Group.



(Mr. Lee, Observer, Republic of Korea)

45. Lastly, he wished to express his appreciation to the UNCITRAL secretariat for its efforts in the field of training and assistance. Symposia and seminars on international trade law were of great benefit to government legal advisers, jurists and academicians from developing countries. There appeared to be agreement in UNCITRAL that regional symposia and seminars should be continued and strengthened. UNCITRAL's sponsorship of national symposia and seminars should also be encouraged.

46. Mr. SZASZ (Chairman of the United Nations Commission on International Trade Law) expressed his appreciation to the Sixth Committee for its very competent consideration of the UNCITRAL report. The results of its deliberations would be conveyed to UNCITRAL and would serve as a useful guide for the development of its future work with a view to the removal of legal obstacles to commercial relations at all levels.

AGENDA ITEM 122: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS: REPORT OF THE SECRETARY-GENERAL (A/39/465)

47. The CHAIRMAN reminded the members of the Committee that the item had been included in the agenda of the thirty-seventh session of the General Assembly at the request of Denmark, Finland, Norway and Sweden. With regard to that question, a report of the Secretary-General (A/39/465) had been circulated. The report set forth the relevant information received from 12 Member States and contained an annex with a list of States that, as at 24 August 1984, had ratified or acceded to the Protocols Additional to the Geneva Conventions of 1949.

48. Mr. HAKAPÄÄ (Finland), speaking also on behalf of the delegations of Denmark, Norway and Sweden, said that, although there should be no need to establish the kind of provisions laid down in the Additional Protocols, the humanitarian law of warfare continued to be of crucial importance in the modern world, in which, unfortunately, armed conflicts continued to occur. The strict observance of the provisions contained in the Additional Protocols could help to alleviate considerably the suffering caused by armed conflicts.

49. In that respect, attention should be drawn to the valuable work being done by the International Committee of the Red Cross. Recently, the cause of promoting humanitarian ideals in armed conflicts had been reaffirmed at the Second World Red Cross and Red Crescent Conference on Peace, held from 2 to 7 September 1984 at Aaland (Finland) and Stockholm. The Conference had considered a number of issues directly related to the Additional Protocols, and alarm had been expressed at civilian casualties in armed conflicts and, in particular, at the situation of children. The Conference had emphasized that all measures should be taken in order to prevent children under the age of 15 from taking a direct part in hostilities. The Additional Protocols contained provisions for the protection of children, which was an additional reason why the Nordic delegations considered it imperative that the broadest possible adherence to the 1977 Protocols should be secured.

(Mr. Hakapää, Finland)

50. There were other instruments related to the Additional Protocols, such as those referred to in General Assembly resolution 32/44 of 8 December 1977. The Assembly had subsequently adopted the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, which had entered into force in December 1983. At the current session of the General Assembly, that question had been included as a separate item and had been allocated to the First Committee.

51. On the previous occasion when item 122 had been discussed in the Sixth Committee there had been 26 ratifications of or accessions to Protocol I, and 23 of or to Protocol II. According to the Secretary-General's report (A/39/465), those figures were currently 45 and 39. Although it was encouraging to note the increase in ratifications or accessions, the Additional Protocols still remained far from having a universally binding force. Accordingly, it seemed appropriate that the General Assembly should once again call upon States to ratify or accede to those fundamental instruments of international humanitarian law. Furthermore, so far only very few States had recognized the competence of the International Fact-Finding Commission provided for in article 90 of Protocol I. The Nordic delegations wished to recommend that, when preparing the ratification of or accession to Protocol I, States should make a declaration in accordance with article 90 to the effect that they recognized the competence of the Commission in relation to other parties having accepted the same obligation. Finally, it would be useful if the General Assembly continued to review periodically the status of the Additional Protocols.

52. The CHAIRMAN, with the consent of the Committee, gave the floor to the representative of the Permanent Observer Mission of Switzerland and recalled that the Government of that country was the depositary of the Protocols Additional to the Geneva Conventions.

53. Mrs. POMETTA (Observer for Switzerland) said that Switzerland had organized and presided over the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which had led to the adoption, in 1977, of the Protocols Additional to the Geneva Conventions, after negotiations in which the most diverse legal, political and military concepts had been represented.

54. Since the end of the Second World War, there had been approximately 150 armed conflicts in the world, in spite of the existence of an international law that rejected war as a lawful means of resolving disputes. Additional Protocols I and II complemented the Geneva Conventions, codified to a large extent the norms of customary law and broadened the scope of the 1949 Conventions. Moreover, the provisions of international law could cover all cases of armed conflicts. The implementation of the Conventions and Protocols did not, however, affect the legal status of the parties to the conflict and the territories in which the conflict occurred. The protection of the civilian population and the combatants was, as a result, strengthened by the Additional Protocols, for which reason it would be advisable, in the interest not only of the victims and the combatants but of the international community as a whole, that all States should accede to those two instruments.

(Mrs. Pometta, Observer, Switzerland)

55. However, the decisive factor in the development of humanitarian law continued to be the will of States to respect the norms to which they had subscribed. Switzerland, as a State party to the Geneva Conventions and Protocols I and II, and, as a State whose duty was not only to respect the Conventions and Protocols but also to see that they were respected, expressed its concern at the frequent and often grave violations of humanitarian law. In the opinion of the Government of Switzerland, the Geneva law constituted, as a whole, a body of urgent obligations and not an ideal or simple norms of conduct whose application was left to the vicissitudes of politics or the evolution of the military situation. The Government of Switzerland therefore took the present opportunity to emphasize the importance which it attached to the prohibition of the use of chemical weapons, contained in the Protocol signed at Geneva in 1925, and also the prohibitions or restrictions of the use of certain conventional weapons that might be deemed to be excessively injurious or to have indiscriminate effects, contained in the Convention of 10 October 1980.

56. It was to be hoped that the efforts of the international community, and in particular of the Sixth Committee, to ponder the problems of the implementation of humanitarian law would be able to proceed further on the occasion of the fortieth anniversary of the United Nations and of the twenty-fifth Conference of the International Red Cross, which would be held at Geneva in 1986.

57. The CHAIRMAN announced that the list of speakers on item 122 would be closed on Monday, 1 October, at 6 p.m.

The meeting rose at 4.50 p.m.