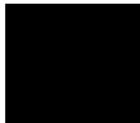


United Nations
**GENERAL
ASSEMBLY**

THIRTY-EIGHTH SESSION

*Official Records**



SIXTH COMMITTEE
2nd meeting
held on
Wednesday, 28 September 1983
at 10.30 a.m.
New York

SUMMARY RECORD OF THE 2nd MEETING

Chairman: Mr. GASTLI (Tunisia)

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**Distr. GENERAL
A/C.6/38/SR.2
4 October 1983
ENGLISH
ORIGINAL: FRENCH**

The meeting was called to order at 10.55 a.m.

ELECTION OF THE VICE-CHAIRMEN AND THE RAPPORTEUR

1. The CHAIRMAN thanked the Under-Secretary-General for Legal Affairs for honouring the Committee with his presence. He was convinced that Legal Counsel and all his associates would co-operate with the Committee in their usual efficient manner throughout the work of the thirty-eighth session.
2. The Committee constituted a valuable crucible in which former international law was melted down and new international law was forged. Its role consisted primarily in establishing a new international legal order, which was the necessary foundation for the establishment of the new international economic order. He invited all the international news media to give greater coverage to the Committee's work so as to familiarize world public opinion with its activities and achievements.
3. Mr. GRANIZO (Ecuador), speaking on behalf of the Group of Latin American States, nominated Mr. Knipping-Victoria (Dominican Republic) for the office of Vice-Chairman.
4. Mr. Knipping-Victoria (Dominican Republic) was elected Vice-Chairman by acclamation.
5. Mr. RODRIGO (Sri Lanka) said that the Group of Asian States, of which he was Chairman, was continuing its consultations on the election of the other officers of the Committee.
6. Mr. YOUGH (Nigeria) assured the Committee of the assistance of the Group of African States.
7. Mr. HANAPÄÄ (Finland) said that the Group of Western European and Other States did not have any candidate to nominate for the other offices of the Bureau.
8. Mrs. KOLAROVA (Bulgaria) said that the Group of Eastern European States, of which her country was Chairman, was not yet in a position to nominate a candidate for one of the two offices still vacant but that the Group was continuing its consultations.

ORGANIZATION OF WORK

9. The CHAIRMAN drew attention to the two documents relating to the organization of work, namely, document A/C.6/38/1, which listed the items referred to the Committee, and document A/C.6/38/L.1, which contained a note by the Secretariat on the organization of work.
10. Mr. KATEKA (United Republic of Tanzania) proposed that, in order to save time, the Committee should devote only one meeting to the election of the vice-chairmen and to the organization of work, not two meetings as suggested in the note by the Secretariat.

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11. Mr. DIACONU (Romania), supported the proposal made by the Tanzanian representative. In addition, his delegation felt that the Secretariat had not given agenda item 64, entitled "Development and strengthening of good-neighbourliness between States", its proper place in the note on the organization of work. That question was actually very broad and was of interest to many States, as was evident in the large number of replies which the Secretariat had received in response to the questionnaire it had sent to Governments and on the basis of which more than 30 documents had already been published. Therefore, many delegations could be expected to ask to speak during the discussion of that question. Accordingly, he proposed that the Committee should consider that item earlier, for example immediately after item 134 (Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization) and before item 133 (Report of the Committee on Relations with the Host Country), and that an additional meeting should be devoted to that item, in other words, the meeting not used for the organization of work.

12. Mr. ROSENSTOCK (United States of America) said that, while he supported the proposals made by the representatives of the United Republic of Tanzania and of Romania, if every representative suggested changes in the programme of work and allocation of meetings prepared by the Secretariat, he was afraid it would be difficult to limit the discussion on the organization of work to one meeting, as the representative of the United Republic of Tanzania had proposed. Therefore, he suggested that the debate on the organization of work should be adjourned and that the Committee should immediately begin its consideration of agenda item 127 concerning the report of the United Nations Commission on International Trade Law (UNCITRAL), which the Chairman of UNCITRAL had come to introduce in person. Six meetings were to be devoted to that item and, in the meantime, the groups could hold consultations with a view to reaching agreement on the order in which the agenda items were to be considered and on the number of meetings to be devoted to each item. Then when the time came, half a meeting should be enough to settle the question of the organization of work once and for all.

13. Mr. CALERO-RODRIGUES (Brazil) supported the proposal made by the representative of the United States but suggested that, before closing the debate on the organization of work, the Committee should hear from those representatives who had made proposals in that connection so that their views could be taken into account during the consultations.

14. The CHAIRMAN summarized the proposals made by the representatives of the United Republic of Tanzania, Romania and the United States of America and asked the Committee to authorize him to hold consultations with the chairmen of the different regional groups in order to consider the question of the organization of work. He invited any members of the Committee who so desired to comment on the proposal made by the representative of the United States to the effect that the Committee should begin its consideration of the UNCITRAL report and invite the Chairman of UNCITRAL to introduce the report.

15. Mr. ROSENSTOCK (United States of America), clarifying his previous remarks, said that, far from endorsing all of the proposals made by the Secretariat in connection with the organization of work, his delegation had objections both to the proposed order for the consideration of the agenda items and to the number of meetings allocated for each item. However, in his delegation's opinion, proposals concerning the organization of work could very well be considered and discussed at informal consultations, and not at regular meetings. Invoking rules 119 and 118 of the rules of procedure of the General Assembly, he reiterated his proposal to adjourn the debate on the organization of work and to begin consideration of agenda item 127 concerning the report of UNCITRAL.
16. Mr. YOUGH (Nigeria) said that all the proposals made thus far were interesting but that it would be preferable to wait until all the officers had been elected before taking a final decision on the organization of work. With the assistance of the officers, it would be easier for the Chairman to hold consultations with the chairmen of the regional groups in order to reach an agreement on all aspects of the question. Meanwhile, the Committee could therefore begin its consideration of the UNCITRAL report, as the representative of the United States had suggested.
17. Mr. ROSENSTOCK (United States of America), speaking on a point of order, drew attention to the fact that he had presented his proposal as a motion under rules 119 and 118 of the rules of procedure of the General Assembly and that rule 118 stipulated that such motions should not be debated.
18. The CHAIRMAN said that the Chair had taken note of the United States proposal and was taking it duly into account.
19. Mr. LAMAMRA (Algeria) said that, as he understood it, the Chairman had followed up the proposal made by the representative of the United States without having recourse to the machinery provided for in the rules of procedure. His delegation supported the idea of asking the Chairman of the Committee to hold consultations with the chairmen of the regional groups in order to reach an agreement on the organization of work. In addition, his delegation felt that the Chairman of UNCITRAL should be given an opportunity to introduce that body's report as soon as possible. Moreover, since his delegation would not participate in the closed consultations mentioned earlier but would be represented by the delegation of Nigeria in its capacity as Chairman of the Group of African States, his delegation wished to stress the importance it attached to agenda item 64 concerning good-neighbourliness. That item required thorough consideration, and a sufficient number of meetings should therefore be allocated to it. In that connection, he observed that the long-standing relations between his country and Tunisia were based on that principle, as well as on other principles, such as the peaceful settlement of disputes, which the Committee would eventually consider. Accordingly, it viewed Tunisia's election as Chairman of the Committee as a tribute to the Maghreb as a whole and as an expression of the hope that the rule of law would prevail in international relations.

AGENDA ITEM 127: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS SIXTEENTH SESSION (A/38/17)

20. Mr. CHAFIK (Chairman of the United Nations Commission on International Trade Law) recalled that UNCITRAL had held its sixteenth session in Vienna from 24 May to 3 June 1983 and that its work at that session had chiefly been focused on the draft rules on liquidated damages and penalty clauses (chap. II of the report (A/38/17)), which was a topic that had been entrusted to the Working Group on International Contract Practices. In 1981 the Working Group had adopted draft uniform rules, that had subsequently been circulated, together with a commentary by the Secretariat, to all interested Governments and international organizations, for their comments. At its sixteenth session UNCITRAL had adopted the uniform rules, reproduced in annex I to its report. Part I of the uniform rules dealt with the scope of application of the rules, which basically applied to international contracts whose clauses provided for the payment of an agreed sum upon failure of performance. That part was based on the Convention on the Limitation Period in the International Sale of Goods (1974) and the United Nations Convention on Contracts for the International Sale of Goods (1980), both of which had been drafted by UNCITRAL and adopted by diplomatic conferences. Part II contained substantive provisions dealing with the main differences between the common law systems and the systems based on Roman law. Under common law, clauses on liquidated damages were valid if the agreed sum constituted a reasonable estimate of any loss that might have been suffered, which was not so in the case of penalty clauses to enforce performance. Under Roman law, on the other hand, both types of clauses were valid. The purpose of the uniform rules was therefore to attenuate such differences.

21. There were further differences between the various legal systems. For example, the question arose whether a party to a contract was entitled to require of the defaulting party both the agreed sum and performance of the obligation, and there was also the question of the nature of the link to be established between the payment of the agreed sum and the damages. In connection with those points, the rules contained provisions designed to produce uniform results, regardless of the legal system. He hoped that the uniform rules would be adopted in one form or another throughout the world and that they would contribute to the unification of that major aspect of international trade law.

22. At its sixteenth session, UNCITRAL had also considered in detail what form the uniform rules should take. At the outset of the debate on that question, there had been a certain amount of support for three proposals, namely, general conditions, a model law and a convention, with a model law apparently being given preference. A fourth alternative that was suggested subsequently could be a compromise between the option for a convention and the option for a model law, since it consisted in adopting a convention to which substantive rules would be annexed. In accordance with that procedure, for which there had been considerable support on the Commission, States not wishing to accede to a convention could nevertheless use the annex as a model law. In case that solution should be adopted, the UNCITRAL secretariat had prepared a draft convention to which the uniform rules could be annexed. The draft articles in question were set forth in annex II to the report of UNCITRAL (A/38/17).

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(Mr. Chafik)

23. However, no consensus had emerged in favour of any particular option. UNCITRAL had believed that it might be desirable for the Committee to decide on the most appropriate form for the uniform rules. The Committee might also consider recommending that the General Assembly should take appropriate measures to promote the adoption of the uniform rules at the international level.

24. With regard to international payments (chap. III of the report), UNCITRAL had considered the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Convention on International Cheques, drawn up by the Working Group on International Negotiable Instruments. At its fifteenth session UNCITRAL had decided that the question of what further action was to be taken in connection with those two draft conventions could be settled at its seventeenth session, which was to take place in the summer of 1984, taking into account the comments received from interested Governments and international organizations. Although the deadline set for submission of comments was 30 September 1983, some comments had already been received at the sixteenth session. UNCITRAL had decided that at its seventeenth session it would undertake an in-depth study of the main characteristics of the draft conventions and the chief problems to which they gave rise and that it would decide at that session what steps should be taken.

25. With regard to electronic funds transfers, at its fifteenth session UNCITRAL had noted that a legal guide should be prepared on that question so that legislation in that field should develop at the same pace as the relevant technology. UNCITRAL had noted with gratification that progress was being made with the preparation of that guide and that the secretariat planned to submit several draft chapters at the seventeenth session of UNCITRAL.

26. With regard to international commercial arbitration, the Working Group on International Contract Practices had held two sessions, at which it had pursued its work on the preparation of a model law on that topic. That model law was to provide a basis for the updating of domestic legislation and practice, in keeping with the increasingly important role of arbitration as a way of settling international trade disputes. As indicated in chapter IV of the report of UNCITRAL, the Working Group had made encouraging progress in its activities. Furthermore, at its sixteenth session UNCITRAL had decided to expand the membership of the Working Group so as to include all States members of UNCITRAL.

27. With regard to legal aspects of the new international economic order, UNCITRAL was making an extremely specific contribution, since it was preparing a detailed legal guide on drawing up contracts for construction for industrial works. That guide would identify the legal problems to which such contracts gave rise, with a view to enabling the parties, particularly the developing countries, to draft and negotiate equitable and balanced contracts. Its drafting had been entrusted to the Working Group on the New International Economic Order, in which all States members of UNCITRAL were represented. As indicated in chapter V of the report of UNCITRAL, the Working Group had considered a draft structure of the legal guide and three draft sample chapters prepared by the secretariat. It had reported that considerable progress had been made.

(Mr. Chafik)

28. An important aspect of the mandate of UNCITRAL in the field of the unification and harmonization of international trade law was the co-ordination of its work with other organizations active in that area and the promotion of co-operation among them (chap. VI of the report). The UNCITRAL secretariat had submitted an excellent report on the activities undertaken by other organizations in the field of international trade law, and the representatives of a number of such organizations, who had participated in the sixteenth session of UNCITRAL as observers, had made statements on that question. The co-operative spirit displayed by the various organizations active in that field was extremely encouraging. In chapter VI of its report (A/38/17), UNCITRAL had described the way in which it had pursued the goals in question at its sixteenth session.

29. For example, the International Institute for the Unification of Private Law had been dealing with the question of the liability of international terminal operators for some time. The Institute's draft rules sought to establish a uniform liability régime applicable to all the phases of the international transport of goods. At its sixteenth session UNCITRAL had learned that the Institute wished the Commission to co-operate with it in its work on the project in question and even to take up the topic. In view of the importance of the matter and the quality of the work carried out so far by the Institute, UNCITRAL had acceded to that request by including that topic in its programme of work and it had formally invited the Institute to transmit its preliminary draft convention to the Commission.

30. With regard to training and assistance in the field of international trade law (chap. VIII of the report), at its sixteenth session UNCITRAL had received a report describing the activities conducted in that field by the secretariat in the course of the past year, and the Secretary of UNCITRAL had informed the Commission of the projects planned for the ensuing year. UNCITRAL had noted with particular interest that the secretariat had participated in a number of regional seminars on international trade law and it had approved the general approach taken by the secretariat in its work.

31. With regard to the status of conventions that had been the outcome of the Commission's work (chap. VII of the report), UNCITRAL had been informed of the considerable progress made regarding ratification of the Convention on the Limitation Period in the International Sale of Goods (New York, 1974) and the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), both of which had been drawn up by UNCITRAL. The conventions in question might therefore be expected to enter into force as early as 1984. The United Nations Convention on the Carriage of Goods by Sea, 1978, which was known as the Hamburg Rules, also appeared to be generating increasing interest at the international level.

32. He looked forward with keen interest to the debate on the report of UNCITRAL and wished to express the Commission's gratitude to the Committee for the support and encouragement it had been given over the years.

The meeting rose at 12.50 p.m.