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New York

SUMMARY RECORD OF THE 4th MEETING

Chairman: Mr. FERRARI-BRAVO (Italy)

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The meeting was called to order at 3.30 p.m.

AGENDA ITEM 115: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS ELEVENTH SESSION (A/33/17, A/33/177)

1. Mr. DATE-BAH (Chairman of the United Nations Commission on International Trade Law), introducing the report of UNCITRAL (A/33/17), drew particular attention to the Convention on the Carriage of Goods by Sea, adopted at Hamburg on 31 March 1978. That was the second United Nations Convention based on preparatory work done by UNCITRAL and it created a better balance in commercial contracts of carriage between shipowners and shippers, while also making existing legal rules accord with conditions prevailing in modern ocean carriage. It also reflected fruitful co-operation between UNCITRAL and UNCTAD.

2. At its eleventh session UNCITRAL had had before it a draft Convention on the Formation of Contracts for the International Sale of Goods. The draft articles provided that a proposal for making a contract was sufficiently definite, and could be accepted so as to conclude a contract, if it indicated the goods and expressly or implicitly fixed or made provision for determining the quantity and the price. The offer could in general be revoked by the offeror until such time as it had been accepted unless it indicated, whether by stating a fixed time for acceptance or otherwise, that it was irrevocable or unless it was reasonable for the offeree to rely upon the offer as being irrevocable and the offeree had acted in reliance on the offer. An acceptance by letter, telex or other communication was effective at the moment it was received, not at the moment it was sent. An offeree could also accept by doing an act, such as sending the goods or paying the price, if such an act was indicated as an appropriate means of acceptance in the offer, as a result of practices which the parties had established between themselves or by usage. If the offeree sent back to the offeror a message which purported to be an acceptance but which contained terms as to the contract which were in addition to or different from those in the offer, such a message constituted an acceptance unless the additional or different terms materially altered the terms of the offer. With respect to all those points on which there were different rules in different legal systems, the draft articles should go a long way towards reducing the confusion that often occurred among merchants.

3. The Commission had decided to incorporate the articles on the formation of contracts into the draft Convention on the International Sale of Goods, to form a single integrated text. However, the integrated text, known as the draft Convention on Contracts for the International Sale of Goods, was divided into three parts: part I, dealing with the sphere of application and general provisions, part II, containing the rules on the formation of the contract, and part III, containing the substantive rules governing the obligations of the buyer and the seller. The draft would permit States to ratify or accept the Convention in respect of only parts I and II, or only parts I and III, or all three parts. That would enable the advantages of a unified text to be combined with a flexibility in adhering to the Convention.

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4. The Commission had decided to recommend that the General Assembly should convene a diplomatic conference to conclude, on the basis of the draft approved by the Commission, a convention on the subject. It had further recommended that the General Assembly should authorize the diplomatic conference to consider the desirability of preparing a protocol to the Convention on the Limitation Period in the International Sale of Goods which would harmonize its provisions in respect of sphere of application with those in the new draft Convention.

5. In considering its new work programme, the Commission had taken account of proposals submitted by Governments and international organizations as well as some suggestions from the Secretariat. The discussion had focused on two major issues: selection of the items which it was feasible to include in the work programme, and the manner in which the Commission could more effectively achieve the task of co-ordinating the work of other organizations active in the same field. On the first issue, the Commission had established a work programme with a priority list of items. It had, however, decided that no item was to be referred to a working group until the Commission had decided, on the basis of preparatory studies by the Secretariat, that the item was a suitable one in the context of the unification and harmonization of trade law and that the preparatory work was sufficiently advanced for a working group to commence work in a profitable manner.

6. The Commission had paid special attention to the item entitled "The Legal Implications of the New International Economic Order", in accordance with the resolutions adopted by the General Assembly at its past three regular sessions and at its sixth and seventh special sessions. In response to the Assembly's requests, the Commission had formulated a course of action which was both positive and pragmatic. Since both the mandate of UNCITRAL and the expertise of its members focused on legal issues, while the establishment of a new international economic order embraced not merely legal issues but political and economic issues related to the structure of economic relations, UNCITRAL had requested the Secretariat to consult with other international organizations involved in work on the new international order relevant to international trade law. Furthermore, Governments would be invited to submit proposals relating to the new international economic order for consideration by UNCITRAL and, lastly, a Working Group of the Commission had been created which, after the Commission's next session, would examine the Secretariat's report and make recommendations as to specific topics on which work could appropriately be undertaken.

7. With regard to co-ordination of the work of organizations engaged in the unification of international trade law, the Commission had recognized its duty to co-ordinate such work not only in regard to its own work in relation to the work of other organizations, but in relation to the work of other organizations inter se. That mandate had hitherto been discharged by means of consultative links between the secretariat of the Commission and other organizations active in the field of international trade law. However some organizations, having independent legal status, had commenced work on matters within the competence of the Commission without adequate reference to it. The Commission had requested the Secretary-General to co-ordinate the work programme of the Commission with that of other

(Mr. Date-Bah)

organizations working in the same areas. Since the General Assembly was the pre-eminent body in the United Nations family, and even among other international organizations, the work of the Secretariat in fulfilling that mandate would be facilitated if the Assembly gave directives concerning the necessity for co-ordination and collaboration, and if the Sixth Committee could provide guidance concerning the means of achieving it.

8. In the field of international payments the Commission's Working Group on International Negotiable Instruments had continued its consideration of the issues arising out of the draft uniform law on international bills of exchange and international promissory notes. The Commission hoped to be able to consider a draft text at its thirteenth session, in 1980.

9. On the question of training and assistance in the field of international trade law, the Commission continued to believe that the UNCITRAL symposium on international trade law constituted an important aspect of the Commission's work. The question of funding was dealt with in a report by the Secretary-General (A/33/177). The Commission would be grateful if the Sixth Committee could devise a method whereby the necessary funding could be obtained.

10. The Commission had considered the implications of the possible transfer of the International Trade Law Branch from New York to Vienna and also the venue of the Commission's sessions in the event of a transfer. It had decided to recommend that the present system of holding alternate sessions in New York and Geneva, or in Vienna instead of Geneva, should be maintained. Most delegations had expressed concern over the possibility that Vienna might not have such a wealth of bibliographical material as New York, in view of the great importance of such materials to the research work carried out by the Secretariat. Although some delegations had expressed the view that the Commission should merely take note of General Assembly resolution 31/194 without discussion, most delegations had insisted that a concern for the quality of UNCITRAL's work was a legitimate concern of theirs and that UNCITRAL had every right to make a recommendation to the General Assembly to reconsider the decision concerning the transfer. The Commission had decided to recommend to the General Assembly that it should defer the transfer of the Commission's secretariat to Vienna for a period of three years, in order to allow time for the establishment of the necessary research facilities for its secretariat, and that the position should be reviewed in the light of the circumstances then prevailing. Although the Austrian delegation had expressed its Government's willingness to provide financial assistance for the establishment of an adequate reference library at Vienna, the Austrian Government had made no commitment to contribute any specific sum. If the United Nations had to meet part of the costs, that would affect the financial implications involved in the transfer of the Branch to Vienna. Among the factors mentioned by delegations supporting the recommendation to the General Assembly to delay the transfer to Vienna were the possibility of additional financial implications, the disadvantage of having less ready access there than in New York to large international trading interests and institutes, which the secretariat frequently consulted, and the fact that the International Trade Law Branch would be inconveniently separated from the Office of Legal Affairs.

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11. The Legal Counsel of the United Nations had stated that UNCITRAL, as a subsidiary organ of the General Assembly, had no authority to call in question the decision concerning the transfer. But, as many delegations had pointed out, UNCITRAL did not seek to challenge the authority of the Assembly but sought merely to draw the Assembly's attention to certain consequences of its decision on the transfer and urged it to exercise its undoubted authority to vary any of its previous decisions. UNCITRAL hoped that the Sixth Committee would find that recommendation to the General Assembly acceptable and endorse it.

12. In any case, UNCITRAL would be grateful if the Sixth Committee could recommend to the General Assembly that it invite Member States to donate suitable legal materials for the library of the UNCITRAL secretariat.

13. He thanked the Government of Austria for its invitation to the Commission to hold its next session at Vienna.

14. UNCITRAL considered that, thanks to the support provided by the Sixth Committee, during the 10 years that had elapsed since its establishment it had been able to make substantial progress in eliminating the differences in the legislations of various States on international trade and thus remove one of the obstacles impeding the development of world trade.

The meeting rose at 4.05 p.m.