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SIXTH COMMITTEE
5th meeting
held on
Thursday, 29 September 1977
at 3 p.m.
New York

SUMMARY RECORD OF THE 5th MEETING

Chairman: Mr. GAVIRIA (Colombia)

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AGENDA ITEM 113: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
ON THE WORK OF ITS TENTH SESSION (continued)

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The meeting was called to order at 3.25 p.m.

AGENDA ITEM 113: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TENTH SESSION (continued) (A/32/17)

1. Mr. WIDDOWS (Australia) said his delegation was particularly gratified to see the adoption by UNCITRAL of a draft Convention on the International Sale of Goods, whose preparation had clearly been one of the most important and arduous tasks undertaken by the Commission since its establishment. The draft did, of course, include certain features deriving from the civil law which were not familiar to the businessmen and lawyers of a country like Australia, which had a common law system. But that might well be a simple question of terminology rather than a problem of substance. Certainly the practical situations to which the provisions of the draft Convention were directed were familiar to the parties to an international sale of goods, whatever their national law might be and wherever their place of business, and the methods proposed in the draft for dealing with those situations were basically the methods of common sense.
2. His delegation was glad to see that articles 7 and 25 of the draft Convention had been amended by UNCITRAL at its tenth session so as to require the seller to deliver the goods free from rights or claims of an industrial or intellectual property nature in the country where the buyer had his place of business or in any other State where the parties contemplated that the goods would be resold or used, provided, of course, that the seller was aware, or could not have been unaware, of those claims at the time of the contract. That seemed only fair to the buyer, and that was why Australia had pressed for the adoption of that amendment.
3. His Government supported the holding of a conference of plenipotentiaries to consider the draft Convention, which was a satisfactory compromise, made possible by the willingness of the members of UNCITRAL to be realistic and flexible in their approach and which, it was to be hoped, would in due course contribute significantly to the flow of international trade. It should be noted that the Working Group on the International Sale of Goods hoped to complete the text of a Convention on the Formation and Validity of Contracts for the International Sale of Goods in September, so that UNCITRAL could adopt it at its eleventh session and submit it to the conference of plenipotentiaries at the same time as the draft Convention on the International Sale of Goods.
4. With regard to international commercial arbitration, his delegation noted with satisfaction that since their promulgation the previous year the UNCITRAL Arbitration Rules had been recognized or adopted in many countries, both developed and developing, which was surely a very material contribution to the harmonization of the rules applied to international trade, and an encouragement to UNCITRAL. His Government had publicized the Rules among commercial and arbitration bodies in Australia, where they had been generally welcomed. It had also followed with interest the deliberations of the Asian-African Legal Consultative Committee concerning commercial arbitration, and agreed that the points it had brought forward for the attention of the Commission merited thorough study. Parties who

(Mr. Widdows, Australia)

had freely agreed to go to arbitration to settle their disputes should be assured, as far as possible, that the arbitral process would not be inhibited by the taking of unexpected points of law. His delegation therefore supported the decision taken by UNCITRAL that the proposals aimed at ensuring fair and effective arbitration should be looked into further by the secretariat, in consultation with the Committee and interested commercial and arbitration bodies.

5. With regard to collaboration between the Commission and other organizations, his delegation approved of UNCITRAL's decision to establish a consultative group composed of representatives of its secretariat, of UNIDROIT and possibly of the Hague Conference on Private International Law, which should make it possible to avoid overlapping and duplication of effort by bodies which were all concerned with the harmonization and unification of law.

6. Mr. ROSENSTOCK (United States of America) said that his Government regarded UNCITRAL, whose work was conducted in a spirit of constructive co-operation, whose members were highly qualified and whose secretariat was extremely efficient, as an excellent example for other United Nations bodies. While other such bodies continued to debate the political issues which threatened to separate countries, UNCITRAL was seeking to enable those countries to continue to deal with each other economically. Its work aimed at the progressive harmonization and unification of international trade law was an important factor in the promotion of friendly relations among peoples and consequently in the maintenance of world peace and security.

7. Most of the Commission's report was devoted to the draft Convention on the International Sale of Goods. His delegation supported the convening, at the appropriate time, of a conference of plenipotentiaries to consider the draft, which provided an excellent basis for negotiations for the adoption of a convention that would facilitate international trade. More specifically, it supported the provisions of article 11 which were designed to accommodate the interests of certain countries that wished contracts to be in writing. It considered, however, that provision should be made in chapter V, section IV, relating to damages, for the recovery of interest when a party was damaged by a breach of contract.

8. At its tenth session, the Commission had also decided to request the Secretary-General to prepare a report on the feasibility of uniform rules on security interests. His delegation was pleased that UNCITRAL had decided to pursue that work, for it felt that the creation of a security interest which would be recognized and enforceable outside the country where it was created would enlarge the pool of credit available for international trade.

9. He also noted that the Commission had decided to interrupt for the time being its work on the subject of products liability, but would review the question at a future session if any of its members took an initiative to that effect. The preparation of unified rules on products liability would encourage international trade and provide added protection for consumers. However, his delegation, realizing that national laws on the subject had not all attained the required level,

(Mr. Rosenstock, United States)

accepted UNCITRAL's decision but hoped that its members would continue to give their attention to the problem and that the Commission would eventually be able to produce a useful body of law on that topic.

10. UNCITRAL had done noteworthy work with regard to international commercial arbitration. The previous year, on the recommendation of the Sixth Committee, the General Assembly had recommended the application of the UNCITRAL Arbitration Rules in the settlement of disputes arising in the context of international trade relations. It was particularly encouraging to note that those Rules had been widely accepted and that the Asian-African Legal Consultative Committee had recommended their use.

11. In conclusion, he congratulated UNCITRAL for having completed its work on the draft Convention on the Carriage of Goods by Sea, and expressed the hope that the conference whose convening in 1978 had been recommended by the General Assembly at its previous session would in fact meet and bring to fruition the excellent work done by the Commission on that topic.

The meeting rose at 3.40 p.m.