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Tuesday, 4 October 1977  
at 10.30 a.m.  
New York

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SUMMARY RECORD OF THE 8th 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 11.10 a.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. SUCHARITKUL (Thailand) said that the problems of international trade had become increasingly complex with the growing importance of trade in international economic relations and in national economic development. At a time when efforts were being made to establish a new international economic order, the problems of international trade called for particular attention. The role of international trade in the context of the Charter of Economic Rights and Duties of States should also be strengthened, in the general interest of both developing and developed States, in order to re-establish the appropriate balance among the various categories of countries. The United Nations Commission on International Trade Law should contribute to the progressive development of uniform or quasi-uniform rules governing international trade.
2. His delegation agreed in principle with the general content of the draft Convention on the International Sale of Goods, as contained in chapter II of the Commission's report (A/32/17). The adoption of such a draft would provide a solid basis for trade relations in the field of the international sale of goods. His delegation approved of the limited scope and sphere of application of the provisions of the draft.
3. Article 1 in its current form appeared well-balanced and generally acceptable. The Commission had been right to adopt paragraph 3 of that article, in view of the artificial nature of the nationality of the parties and in the absence of the relevant link of the civil or commercial character of the parties or of the contract. The adoption of the criterion of nationality would result in unimaginable confusion and uncertainty, since the internal law of States was not always sufficiently clear as to the conditions to be fulfilled in order to acquire nationality, particularly with regard to private enterprises, legal entities and corporate bodies.
4. The sale of goods not covered by the draft Convention, as listed in article 2, could constitute the subject of a subsequent specialized study.
5. The draft Convention was noteworthy for its flexibility, as demonstrated by the provisions of article 7, under which the parties were bound by any usage to which they had agreed and by any practices which they had established between themselves. Accordingly, usage played an important role in the interpretation and application of the principles set forth in the draft.
6. His delegation was in favour of convening an international Conference of Plenipotentiaries as recommended by UNCITRAL in paragraph 34 of its report. Such a conference would afford Member States the opportunity to participate in the process of the codification and progressive development of a legal régime governing international trade. In order to save time, the draft Convention on the

(Mr. Sucharitkul, Thailand)

International Sale of Goods could be considered at the same time as the draft provisions on the formation and validity of contracts for the international sale of goods, and the two drafts could constitute separate conventions or separate parts of a single convention. His delegation was convinced that the conclusion of a general convention would be more effective than the publication of rules on the international sale of goods in the form of optional uniform rules.

7. His delegation noted with satisfaction the invitation from the Government of the Federal Republic of Germany to hold the United Nations Conference of Plenipotentiaries on the Carriage of Goods by Sea in Hamburg in March 1978. The adoption of the draft Convention by the Conference of Plenipotentiaries would constitute tangible progress in the field of maritime law. Many developing countries which had not yet promulgated legislation governing the carriage of goods by sea would be enabled to do so simply by ratifying the Convention, without having to draft separate domestic legislation.

8. His delegation attached great importance to training and assistance in the field of international trade law and regretted that the Second UNCITRAL Symposium on International Trade Law had had to be cancelled for insufficiency of funds.

9. His delegation welcomed the principle of closer collaboration between UNCITRAL and the International Institute for the Unification of Private Law and other organizations which were active in the same field, in order to avoid duplication and wastage of efforts between organizations having similar long-term objectives.

10. With regard to international commercial arbitration, he noted that the recommendations of the Asian-African Legal Consultative Committee regarding the use of the UNCITRAL Arbitration Rules and the ratification of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards had received the general approval of UNCITRAL.

11. Mr. CEAUSU (Romania) said that his delegation had noted with satisfaction that UNCITRAL had completed its work on the draft Convention on the International Sale of Goods. The Commission's constant objectives had been the promotion of international trade and the reliability and stability of commercial transactions, and it had succeeded to a considerable extent in finding correct solutions for the many delicate problems posed by contractual relations in connexion with the sale of goods. In the draft, the Commission had sought to achieve a balance between the rights and duties of the seller and those of the buyer. Stable international relations could only be created on the basis of complete equality and mutual benefits. The Commission had tried to use concepts familiar in the greatest possible number of countries, which was certain to make the new Convention more widely acceptable to countries with different customs and legal systems.

12. The draft could, however, be improved in some places. For example, article 32 prohibited the buyer from declaring a price reduction on goods not conforming with the contract when he had not allowed the seller to remedy a failure to perform his obligations in accordance with article 30. However, article 30 gave the buyer the

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(Mr. Ceausu, Romania)

right to refuse a remedy when it would cause him unreasonable inconvenience, or would entail such delay as would amount to a fundamental breach of contract. His delegation therefore maintained that article 32 should specify that the buyer was deprived of the right to declare a price reduction only when his refusal to allow the seller to remedy the failure to perform his obligations was contrary to the provisions of article 30. Similarly, article 37 introduced an element of uncertainty and a source of injustice into contractual relationships. The price was an essential element of the contract of sale, and there could be no contract between the parties except where they had also fixed the price of the goods, or had established precise criteria for determining the price. Consequently, in the case of contracts where the price was not determined, it would be unfair for the buyer to be obliged to pay "the price generally charged by the seller". Such a solution would obviously give an unfair advantage to the seller.

13. According to article 7, the practices and usages "widely known to, and regularly observed by, parties" to contracts of the same type were considered, unless otherwise agreed, to be implicitly applicable to the contract. His delegation considered that article 7 introduced elements of uncertainty into contractual relationships; it might constitute a source of misunderstandings and disputes and have effects contrary to the objectives of promoting the unification and harmonization of international trade law. It was also clear that article 7 gave an unfair advantage to developed countries, in which usages of the type in question had been developed and were better known.

14. Articles 25 and 26 likewise gave an undue advantage to the seller by imposing additional obligations on the buyer. The seller, who was usually also the producer, was most aware, or should be aware, of any rights or claims of third parties in relation to the goods sold. It would therefore be appropriate for the seller either to satisfy the claims of third parties, or to inform the buyer of the existence of such claims. His delegation also considered that it was neither advisable nor possible for the draft Convention to seek to regulate the rights or claims of third parties based on industrial or intellectual property to the goods which were the subject of the contract of sale.

15. He emphasized that his comments on the draft Convention had been of a preliminary nature and that the competent authorities of his country would study the draft further and present the official view thereon at the appropriate time. His delegation supported the recommendation of the Commission that the draft should be promulgated in the form of an international convention, and therefore supported the proposal to convene a Conference of Plenipotentiaries to discuss and adopt the draft Convention. It agreed that the Conference should take place after UNCITRAL had completed the draft provisions on the formation and validity of contracts for the international sale of goods, so that the two drafts could be submitted to the same Conference.

(Mr. Ceausu, Romania)

16. Concerning the other substantive problems in the Commission's current programme of work, he noted that doubts existed concerning the feasibility of uniform rules and their possible content. At its next session, UNCITRAL should reach firm conclusions as to its further work on the subject of general conditions of sale and international payments. If it should prove impossible to continue work on certain subjects in its current programme, it would be advisable to consider the possibility of including in the long-term programme new topics of current interest relating to international trade law. At the previous session of the General Assembly, his delegation had proposed two topics for consideration by the Commission, namely rules for multimodal transport and contracts concerning various types of economic co-operation, (other than sales contracts).

17. His delegation supported the Commission's recommendation that the General Assembly should consider the possibility of financing the symposia on international trade law in whole or in part out of the regular budget of the United Nations.

18. As a developing country, Romania wished to participate to the largest possible extent in trade and co-operation with all States, and therefore had an interest in ensuring that international trade could take place free of obstacles or discrimination. It considered that the existence of modern instruments and institutions of international trade law which were valid for relations among all States would stimulate the growth of international trade.

19. Ten years after the establishment of UNCITRAL, his delegation was pleased to note the the Commission's contribution to the progressive development of international trade law. It was convinced that UNCITRAL would continue to devise new draft instruments containing generally acceptable uniform rules which would take account of the current concerns of States seeking the establishment of a new system of international economic relations capable of promoting the development and progress of all peoples.

20. Mr. BUBEN (Byelorussian Soviet Socialist Republic) said that his delegation was gratified to note that the Commission at its tenth session had completed its work on the draft Convention on the International Sale of Goods. The successful elaboration of the draft Convention in the Working Group established for that purpose showed the effectiveness of setting up special working groups for the study of specific questions. As the Chairman of UNCITRAL had observed, the draft had considerably fewer articles than the Uniform Law on the International Sale of Goods, a fact which was certain to simplify the application of the future Convention. However, the draft had certain defects. Article 37 provided for the application of the price charged by the seller at the time of the conclusion of the contract, if the contract did not state the price or make provision for determining it. His delegation considered that failing the determination of a price, which was a fundamental element of a contract of sale, it was not permissible to speak of the existence of a contract as such. In addition, article 37 touched on the validity of contracts, a subject which was not dealt with in the Convention and was being studied separately by the Commission. Drafts prepared by the Commission could not be perfect in all respects, but must be acceptable to all States. The existing

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(Mr. Buben, Byelorussian SSR)

deficiencies in the draft could be removed at the Conference of Plenipotentiaries. His delegation considered that the rules on the international sale of goods should be issued in the form of a convention and not in the form of uniform rules for optional use by the parties. Convincing arguments for such a course were set out in detail in Chapter II of the Commission's report.

21. His delegation considered that a decision concerning the form of the rules on the formation and validity of contracts for the international sale of goods, and the place where they were to be finalized, could be taken after UNCITRAL had studied those rules and formulated a recommendation on the subject. There was no doubt that the adoption of a convention on the international sale of goods would facilitate the settlement of problems arising from international contracts of sale, taking account of the interests of countries in all regions.

22. At its tenth session, the Commission had decided to carry out further work on a range of questions connected with international payments, and his delegation supported that decision.

23. With respect to the question of training and assistance in the field of international trade law, his delegation considered that the cost of the UNICTRAL programme in that field should be met from voluntary contributions, as in the past, and not from the regular budget of the United Nations, which was already overburdened.

24. Ten years had passed since the establishment of UNCITRAL on the initiative of Hungary. During its existence the Commission had achieved positive results in the codification of international trade law, and had completed work on a number of important questions. Taking into account the stage the Commission had reached in dealing with a range of questions, and the views of Governments as expressed in the General Assembly and other United Nations organs, it would be desirable to determine the Commission's future programme of work and the priority to be accorded to each topic. The Commission should complete work on all the topics in its current programme. In its long-term programme, it must obviously deal with the major legal questions arising from the restructuring of international economic relations. Of special importance in that connexion was the practical realization of the complex or constructive proposals for restructuring economic relations, set forth in the statement of the USSR representative. His delegation had already submitted to the Secretariat its comments on UNCITRAL's long-term programme of work. The views of Governments on the long-term programme submitted pursuant to General Assembly resolution 31/99 were to be considered at the eleventh session of the Commission, a course which should enable the Commission to define its future tasks and the most effective ways of tackling them. UNCITRAL must base its activities on generally accepted principles and norms which took full account of the interests of all States and were designed to achieve sovereignty, equal rights and non-interference in internal affairs. The programme adopted at the twenty-fifth Congress of the Communist Party of the Soviet Union for the future struggle for peace and international co-operation and freedom and independence of peoples had as one of its main aims the removal of discrimination and all artificial

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obstacles in international trade, and the elimination of all manifestations of inequity, dictatorship, and exploitation in international economic relations. Guided by those principles, UNCITRAL could make an even greater contribution to the normalization of international trade, the consolidation of equal rights and mutually advantageous co-operation among States, and the strengthening of détente and peace throughout the world.

25. Mr. RIOS (Chile) said that he was gratified by the fruitful results of UNCITRAL's deliberations at its tenth session, in which his delegation had been an active participant. The draft Convention on the International Sale of Goods would provide a solid basis for the adoption of a treaty, which would constitute a further step towards the unification of international trade law. An effort had been made in the draft to harmonize, as far as possible, the different legal systems prevailing in the various countries within the international community. As a developing country, endeavouring to promote non-traditional exports, Chile attached great importance to the final adoption of an international convention establishing rules on contracts of sale which could be ratified by as many countries as possible and would protect the rights of exporters, principally small-scale and medium-scale producers, and provide them with guarantees, in accordance with the principles of the new international economic order. In principle, his delegation agreed to the holding of a Conference of Plenipotentiaries on the question, since an exchange of views among jurists from different systems was useful in achieving understanding on specific areas and in eliminating otherwise seemingly insurmountable obstacles. As had already been stated in the Commission by those who opposed the adoption of the text in the form of uniform rules for optional use, if a conference of plenipotentiaries was not held, the developing countries, as well as those not represented on the Commission, would be deprived of the opportunity of considering the draft in detail and of influencing its final form and content. Thus far, the developing countries had not played a decisive role in international practice, and a binding multilateral treaty would provide a guarantee to developed and developing countries alike.

26. His delegation had had a number of reservations concerning the holding of a conference of plenipotentiaries on the international sale of goods until the draft provisions on the formation and validity of contracts for the international sale of goods had been finalized. However, the statement by the Chairman of UNCITRAL had dispelled those misgivings.

27. In his delegation's view, the sphere of application of the draft Convention was appropriate and the draft covered the topics which were essential to make it, when adopted, a valuable instrument which would facilitate the settlement of the difficult problems which might arise in the negotiation of international sales.

28. His delegation was confident that the draft would, in the near future, become an international treaty of universal character which would make a significant contribution to international trade law. Unified rules on international sales would undoubtedly facilitate international trade.

29. Mr. FERRARI-BRAVO (Italy) said that the draft Convention on the International Sale of Goods adopted by UNCITRAL at its tenth session represented a milestone in the Commission's work, and his delegation considered it of the utmost importance that the draft Convention should be supplemented in 1978 by the consideration of the draft provisions on the formation and validity of contracts for the international sale of goods. While reserving its position as to whether the two texts should or should not be dealt with in two separate conventions, his delegation considered that they should be negotiated at the same conference, since they were clearly interrelated.

30. His delegation also shared the view that the results of UNCITRAL's deliberations with regard to the international sale of goods should not be issued simply as optional rules, for the reasons set out in the Commission's report.

31. His delegation welcomed the recommendation of the Asian-African Legal Consultative Committee that States of the Asian-African region should ratify the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards and that the UNCITRAL Arbitration Rules should be used in the settlement of disputes arising in the context of international commercial relations. That was an important step towards the establishment of a lex mercatoria common to all countries of the world. His delegation also shared the view that it would be useful to prepare studies on the other matters raised by the Asian-African Legal Consultative Committee.

32. With regard to the question of training and assistance in the field of international trade law, it was important that an effort should be made to enable that programme to proceed according to plan.

33. His delegation wished to thank the Government of the Federal Republic of Germany for its invitation to hold the United Nations Conference of Plenipotentiaries on the Carriage of Goods by Sea in Hamburg in March 1978.

34. He noted with satisfaction the increasingly close collaboration between UNCITRAL and the International Institute for the Unification of Private Law. The Institute's contribution to the development of international trade law was well known, and systematic co-operation between the two bodies would undoubtedly produce fruitful results.

The meeting rose at 12.05 p.m.