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at 3 p.m.

New York

SUMMARY RECORD OF THE 9th MEETING

Chairman: Mr. GAVIRIA (Colombia)

later: Mr. BOJILOV (Bulgaria)

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The meeting was called to order at 3.30 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. SIMANI (Kenya) said that his delegation was in favour of convening an International Conference of Plenipotentiaries to conclude, on the basis of the draft Convention approved by UNCITRAL, a Convention on the International Sale of Goods. It would be disinclined to agree that the rules contained in that draft should be issued in the form of optional rules. Moreover, in view of the status of the draft provisions on the formation and validity of contracts for the international sale of goods, the same Conference of Plenipotentiaries should study the two sets of rules simultaneously.
2. With regard to international payments, his delegation endorsed the decisions adopted by the Commission relating to security interests and contract guarantees in paragraphs 37 and 38 of the report (A/32/17).
3. His delegation took note of the decision reached by UNCITRAL regarding future financing of training and assistance in the field of international law. It was regrettable that owing to inadequate financial support, the Second UNCITRAL Symposium had had to be cancelled, especially since Kenya was one of the developing countries which had taken advantage of the assistance given in that respect by certain States. Perhaps the only way of implementing the programme of training and assistance in the field of international trade law might be to finance it out of the regular budget of the United Nations, as UNCITRAL had recommended.
4. His delegation considered that the timing of the meetings of UNCITRAL should take into account the schedules of other legal meetings. Because of the lack of adequate manpower resources, it was not usually possible for the developing countries to be represented at all the legal meetings which were held simultaneously. As far as possible, such meetings should be held in New York, where many States maintained adequate diplomatic representation.
5. In that connexion, he pointed out that the United Nations Conference of Plenipotentiaries on the Carriage of Goods by Sea, to be held in March 1978, tended to overlap with the forthcoming session of the Conference on the Law of the Sea.
6. Lastly, his delegation was in principle agreeable to UNCITRAL's decision not to pursue for the moment its work on liability for damage caused by products intended for or involved in international trade, and with its decision to adjourn its work on "general" general conditions of sale. His delegation welcomed the continued co-operation between UNCITRAL and other bodies, and particularly commended the action taken by the Asian-African Legal Consultative Committee in recommending the use of the UNCITRAL Arbitration Rules in the settlement of disputes arising in the context of international commercial relations.

7. Mr. ONDA (Japan) congratulated UNCITRAL on its success in preparing a draft Convention on the International Sale of Goods which took due account of various domestic laws and commercial customs and practices as well as the opinions of experts. His delegation supported the convening of an international Conference of Plenipotentiaries to conclude an international Convention on the basis of UNCITRAL's draft.

8. As the Working Group on the International Sale of Goods had just agreed upon a draft convention on the formation and validity of contracts for the international sale of goods, and to avoid possible conflicts and overlapping, it would be preferable to deal with that draft and the draft Convention on the International Sale of Goods at the same Conference of Plenipotentiaries, even if the final result was to be two separate instruments.

9. With regard to the drafting of the uniform law on international negotiable instruments, his delegation was gratified to find that the Working Group had already finished the first reading and trusted that it would soon complete its mandate.

10. In addition to the preparation of draft conventions, UNCITRAL was responsible for collecting and disseminating information on national legislation and modern legal developments in international trade law. The Commission's activities in that regard were of great value for businessmen as well as lawyers. It was therefore regrettable that the Second UNCITRAL Symposium on International Trade Law had had to be cancelled due to insufficient funds. It was to be hoped that the Secretary-General would endeavour to secure the financial resources necessary for holding such a symposium in the near future.

11. During the past 10 years, UNCITRAL had made considerable progress in the field of international trade law. It had already completed its work on several priority items and was expected to complete its work on other priority items soon. It should therefore review its long-term work programme at its next session. Before tackling new subjects, it should examine the practical need for work on particular topics as well as its feasibility. The Commission's resources were limited, and moreover unifying international trade law was not an easy task, for the laws of every country were deeply rooted in its customs and practice. His delegation therefore welcomed the realistic decision of the Commission not to give priority to product liability.

12. Mr. ZEHENTNER (Federal Republic of Germany) emphasized the need to expand and improve international commercial relations in a spirit of peaceful co-operation and détente. In order to underline the importance which it attached to the draft Convention on the Carriage of Goods by Sea, his Government had suggested that the Conference of Plenipotentiaries should be held at Hamburg in March 1978. Since that invitation had been accepted, he reminded the Committee of the commercial tradition of Hamburg, a centre of international trade and shipping.

(Mr. Zehentner, Federal Republic of Germany)

13. His country's detailed comments on the draft Convention on the International Sale of Goods were contained in document A/CN.9/125. His Government agreed on the whole to the draft Convention, which should not give rise to major difficulties at the Conference of Plenipotentiaries. He noted with satisfaction that UNCITRAL was in favour of a convention rather than optional rules and that the draft contained only 68 articles whereas ULIS had contained 101. That reform was urgent, but it should be borne in mind that ULIS covered only part of the international law on the sale of goods. Care must therefore be taken that regulations in related areas were co-ordinated, in particular in the field of the formation and validity of contracts of sale. In that connexion, his Government was pleased that the forthcoming session of UNCITRAL was to consider a draft convention on both questions, which should also be submitted to the Conference of Plenipotentiaries which was to consider the draft Convention on the International Sale of Goods.

14. His delegation supported UNCITRAL's request for further preparatory work on international payments. It was also pleased that the rules on international commercial arbitration had been so widely accepted and put into practice in both developed and developing countries.

15. He regretted that the Second UNCITRAL Symposium on International Trade Law had had to be cancelled due to lack of funds, as his Government had agreed to share in the costs, as it had the preceding year. It therefore seemed inevitable to recommend to the General Assembly, as UNICTRAL had done, that it should consider the possibility of financing future symposia out of the regular United Nations budget. To that end, UNCITRAL should submit to the General Assembly specific proposals, as the need arose, for the continuation of its training programme.

15a. Mr. Bojilov (Bulgaria) took the Chair.

16. Mr. KOROMA (Sierra Leone) said that the draft Convention on the International Sale of Goods reflected the will of the international community to develop a body of rules that would regulate commercial and industrial relations, promote a restructuring of the international economic system and expand international trade an important factor for improving the standard of living of all members of the international community, and in particular the developing countries.

17. While UNCITRAL had not introduced major innovations in the text of its draft, the breadth of its approach was incontestable. It had sought to merge, where possible, the principles of common law with those of civil law. Still, with respect to the provisions of article 37, it should be noted that while it was generally agreed that price was an essential element of any contract of sale of goods, that element could be made dependent on various factors external to the contract, and that the parties could agree to determine it later. According to common law, if the yardstick relied upon should fail, the basic agreement for a reasonable price would survive and the contract would remain enforceable. Furthermore, where it was not the intention of the parties to have any binding obligation until they had agreed on the price, those parts of the contract that had not been performed would be regarded as illusory, but the underlying agreement for a reasonable price could still support the contract for a reasonable price to be

(Mr. Koroma, Sierra Leone)

paid. Under both systems of law, price determination was therefore an essential element of any contract of sale of goods. His delegation found it unacceptable that the seller alone should fix the price where that price had not been determined and recommended rather a return to the concept of a reasonable price.

18. Referring to the provisions of article 1, he noted that they were flexible enough to permit parties from the same State to agree that their municipal law would apply. That provision was in accordance with the principle of freedom of contract.

19. As to article 7, both its language and content were conventional and did not contribute to the progressive development of the law. Given the origins of the existing international economic system, that article was unduly favourable to the industrialized countries without contributing to the certainty of business, which was one of the aims of the progressive development and codification of the rules relating to the international sale of goods.

20. Article 8 did not define the concept of fundamental breach; it merely described what would, in an international contract of sale, constitute such a breach. What was substantially detrimental was a question of fact to be established by evidence.

21. As to the form in which the draft Convention should be promulgated, his delegation supported the Commission's recommendation that the General Assembly should convene an international Conference of Plenipotentiaries to conclude a convention on the basis of the draft. In his delegation's view, that should take place after the Commission had, at its eleventh session, considered the rules on formation and validity of contract, which were linked to the draft Convention on the International Sale of Goods. A single draft text should then be prepared incorporating all aspects of the international sale of goods.

22. As a developing country, Sierra Leone could not fail to support the decision of UNCITRAL to continue its programme of training and assistance in the field of international trade law and to recommend to the General Assembly that it should consider the possibility of funding the Commission's symposia on international trade law, in whole or in part, out of the regular budget of the United Nations. His delegation also endorsed the Commission's decision to invite the Secretary-General to continue his efforts to solicit funds from international organizations, foundations and private sources in order to supplement such funds as might be provided under the regular budget of the United Nations.

23. Mr. SCOTLAND (Guyana) observed that UNCITRAL's adoption of a draft Convention on the International Sale of Goods represented another step on the very long road of unification of international trade law. The increasing involvement in international trade of countries which formerly had had no access to it imposed on the international community the continuous obligation to adopt new rules of law reflecting the new international economic order. Once adopted, the Convention would provide a solid basis for the relations between parties to international trade dealings, although articles 7, 11 and 12, as well as the declaration attached to article 11, allowed for variations deriving from local usages.

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(Mr. Scotland, Guyana)

24. Article 13 stressed the international character of the draft and "the need to promote uniformity". That was why his delegation had reservations with respect to article 4, which provided for optional use of the whole or part of the Convention. Thus, the international community would be left with rules which might be applied in whole by some and in part by others.

25. As to the scope of the Convention, as defined in article 6, his delegation felt that an instrument which treated only of the rights and obligations of the seller and buyer arising out of a contract, without provisions relating to the formation and validity of the contract, would be incomplete. The interrelationship between the formation and validity of a contract and the rights and obligations of parties to that contract could not be disputed. The provisions of articles 11, 19, 20 and 26 of the draft showed that clearly. Since the Working Group on the International Sale of Goods had completed the preparation of articles on the formation of contracts of international sale and was about to complete the preparation of articles on their validity, it would be desirable for the same Conference of Plenipotentiaries to consider simultaneously the draft Convention and questions related to the formation and validity of contracts. It was obvious that the provisions governing the formation and validity of contracts required unequivocal language and certainty of application and did not lend themselves to the optional application which some were seeking to impose for the draft Convention. With those reservations, his delegation could support the decision in paragraph 34 of the report under consideration, while hoping that the documents mentioned in paragraph 2 of that decision would appear early enough to permit the envisaged Conference to be properly prepared.

26. Taking into account the United Nations organs and specialized agencies which had been represented at the tenth session of UNCITRAL, his delegation felt that it was important to maintain the closest possible collaboration between UNCITRAL, UNCTAD and other relevant United Nations organs and specialized agencies.

27. His delegation noted with interest that the Asian-African Legal Consultative Committee had recommended to UNCITRAL that it should consider the possibility of preparing an appropriate protocol to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with a view to clarifying a number of questions. The questions to which the attention of UNCITRAL had been invited clearly raised issues in the context of international commercial arbitration. He was pleased to note the increasing recourse to the UNCITRAL Arbitration Rules as the basis for arbitral proceedings and supported UNCITRAL's recommendation in paragraph 39 of its report.

28. The symposia on international trade law conducted under the auspices of UNCITRAL were a source of knowledge; they made possible an exchange of ideas and thereby contributed to the unification process. Therefore, future cancellations of those symposia should be avoided by charging their cost to the regular budget of the United Nations. The cancellation of the Second Symposium was not due to a lack of interest on the part of those who would have participated but to the lack of funds. His delegation felt that the recommendation in paragraph 45 of the report was quite acceptable.



(Mr. Scotland, Guyana)

29. He stressed that the transfer of the International Trade Law Branch from New York, where all member States were represented, to Vienna, where few were, would in effect prevent the developing countries from having easy access to the Branch's resources.

30. Mr. JEANNEL (France) felt that although certain formal improvements could be made in it, the text of the draft Convention on the International Sale of Goods provided a very satisfactory working basis for the envisaged Conference of Plenipotentiaries. His delegation endorsed the opinion expressed by many delegations that the draft should be given the final form of an instrument having binding force on the signatory States.

31. His delegation would like the sphere of application of the draft to be as broad as possible. That was the reason why it felt that it would be desirable to restore a provision which had been deleted from the draft, under which two parties, even if they were nationals of States which had not signed the Convention, could make themselves subject to its provisions by so stipulating in the contract. The Conference of Plenipotentiaries could provide for that possibility in article 1 dealing with the sphere of application of the Convention, rather than article 4.

32. The effect of the provisions of article 37 was that failure to fix the price in a contract did not nullify it. His delegation would prefer the wording of that article to make that point specific, so as to prevent any misinterpretation.

33. Although the wording of article 51 had been improved, additional efforts in that direction should nevertheless be made.

34. Article 55, paragraph 1, introduced an element of distortion unfavourable to the seller, who could also suffer damage through cancellation of the contract. It would therefore be desirable to delete that provision.

35. His delegation agreed with other delegations that the Conference of Plenipotentiaries which would consider the draft Convention on the International Sale of Goods should at the same time consider the draft conventions on the formation and validity of contracts for the international sale of goods. Since those drafts were currently being prepared and would probably be submitted to UNCITRAL in 1978, the date for convening the Conference should be set accordingly. On the other hand, his delegation had no preference as to whether the texts currently being prepared should be embodied in one or two conventions.

36. His delegation welcomed the interest shown by the Asian-African Legal Consultative Committee with respect to international commercial arbitration. The progress of work in that area nevertheless showed the need for a serious intensification of the work of the Secretariat in that connexion.

37. Finally, he welcomed the increasingly close co-operation between UNICTRAL and UNIDROIT and expressed the hope that that co-operation would continue.

38. Mr. AL-ADHAMI (Iraq), referring to the draft Convention on the International

(Mr. Al-Adhami, Iraq)

Sale of Goods, said that in his delegation's view the rules laid down in the draft should be adopted in the form of a convention rather than as optional uniform rules. Only a convention would make it possible to achieve the objective of the harmonization and unification of international trade law sought by UNCITRAL.

39. With regard to the draft provisions on the formation and validity of contracts for the international sale of goods, which UNCITRAL would examine at its eleventh session, his delegation would make known in due course its views on the question whether those provisions should be the subject of a convention separate from the Convention on the International Sale of Goods and whether, in that case, the two drafts should be submitted to a single conference of plenipotentiaries or to two conferences. UNCITRAL itself had not yet taken a decision on the matter. However, it had recommended the convening of an international Conference of Plenipotentiaries to conclude, on the basis of the draft Convention, a Convention on the International Sale of Goods. In his delegation's opinion, it would be premature to take a decision on the subject. It would be preferable for UNCITRAL to study the question once again at its eleventh session and make recommendations which the General Assembly might examine at its thirty-third session.

40. His delegation was pleased to note the favourable reception given to the proposal of UNIDROIT to set up a consultative group composed of the representatives of the secretariats of UNCITRAL, UNIDROIT and, possibly, The Hague Conference on Private International Law. It observed that the United Nations Conference on the Carriage of Goods by Sea was to be held at the same time as the seventh session of the Conference on the Law of the Sea. Lastly, it regretted that it had not been possible for the Second UNCITRAL Symposium on International Trade Law to take place, for insufficiency of funds, and it supported the recommendation that the General Assembly should consider the possibility of providing for the funding of the UNCITRAL symposia, in whole or in part, out of the regular budget of the United Nations.

41. Mr. EL HUNI (Libyan Arab Jamahiriya) welcomed the fact that UNCITRAL had completed the preparation of the draft Convention on the International Sale of Goods and expressed the hope that it would be able, in the very near future, to conclude its work on all the subjects entrusted to it. He also expressed the hope that UNCITRAL would take account, in its work, of the resolutions adopted by the General Assembly at its sixth and seventh special sessions as well as of all other relevant resolutions.

42. His delegation supported the recommendation to convene a Conference of Plenipotentiaries to adopt a Convention on the International Sale of Goods, based on the UNCITRAL draft. The convening of such a Conference would enable countries not members of UNCITRAL to make comments and to participate in the drafting of the final text.

43. The UNCITRAL Arbitration Rules constituted a valuable legal instrument for the settlement of disputes arising in international commercial relations. In that regard, he expressed the hope that UNCITRAL would take into consideration the recommendations made by the Asian-African Legal Consultative Committee.



(Mr. El Huni, Libyan Arab Jamahiriya)

44. After expressing his delegation's best wishes for the success of the United Nations Conference on the Carriage of Goods by Sea, to be held in 1978 in accordance with a decision by the General Assembly, he said that the Conference should embody the results of its work in an international convention or in any other instrument which it deemed appropriate.

45. Mr. DENG (Sudan) welcomed the process whereby States were afforded an opportunity to contribute to the evolution of the norms of international law, a process of which the projected Conference of Plenipotentiaries on the International Sale of Goods was a part. As development projects in the Sudan entailed the conclusion of a considerable number of international contracts of sale, his Government keenly desired the establishment of an equitable legal régime in that field.

46. His delegation endorsed the UNCITRAL recommendation that the draft Convention on the International Sale of Goods should serve as a basis for negotiations during the proposed Conference of Plenipotentiaries. As his country had not participated in the preparation of the draft Convention and the UNCITRAL report had been published only recently, the competent Sudanese authorities still had to examine the various articles of the draft before they could make comments. Nevertheless, it was already possible to state that draft article 37, in its current form, created difficulties, since it seemed to place an undue burden on the buyer.

47. While supporting the convening of a Conference of Plenipotentiaries to conclude a Convention on the International Sale of Goods, his delegation wished to stress that, given the limited number of experts available to the developing countries, it would be necessary to ensure that the Conference did not coincide with another legal conference. The question of the formation and validity of contracts and that of the international sale of goods in general were closely related and his delegation therefore supported the suggestion that the two questions should be considered at the same time, provided that the work of the Conference was not unduly prolonged. Indeed, in view of the number of conferences already scheduled, another conference of five to eight weeks' duration might cause difficulties for the developing countries, which had limited manpower and other resources.

48. His delegation attached the greatest importance to the UNCITRAL programme of training and assistance in the field of international trade law. It therefore regretted that the Second UNCITRAL Symposium on International Trade Law had had to be cancelled for insufficiency of funds. It supported the UNCITRAL recommendation that such symposia should in future be financed out of the regular budget of the United Nations.

49. Mr. BROMS (Finland) considered that the draft Convention on the International Sale of Goods represented a substantial improvement compared with earlier codification efforts in that field. The draft, which was on the whole a balanced document, not only recorded principles already applied to international sales, but also developed the law in that field. It should therefore constitute an excellent basis for the work of a diplomatic conference, even if it had some short-comings

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(Mr. Broms, Finland)

with regard to form which the diplomatic conference would certainly be in a position to correct and which should not prevent the adoption of a convention within a reasonable time.

50. In recommending to the General Assembly the convening of an international Conference of Plenipotentiaries to conclude a Convention on the International Sale of Goods, UNCITRAL had informed the Assembly that it would submit to it at its thirty-third session draft provisions on the formation and validity of contracts for the international sale of goods. Thus, it was for the General Assembly to decide whether those draft provisions and the draft Convention on the International Sale of Goods should be considered at the same conference. Despite the interdependence between the two drafts, his delegation was not opposed to the holding of two separate conferences.

51. At the forthcoming session of UNCITRAL, the most important item on its agenda would probably be its work programme. UNCITRAL had completed or would complete within a few years its work on the most important priority subjects on its agenda; it should therefore be in a position to explore new issues in the field of traditional trade law.

52. The question of model contracts might be extended to fields other than the sale of goods, such as agreements between private parties on licensing and the transfer of technology. However, account should also be taken of the fact that States and public bodies were playing an increasingly important role in international trade and were becoming to an increasing extent parties to contracts governed by private law such as contracts of sale, investment, and guarantees. The question of the borderline between private and public law might therefore arise and that seemed to be a field which the authors of model contracts had not yet explored sufficiently. Certain tasks within that area might be entrusted to UNCITRAL. That might, of course, lead to a conflict of competence between UNCITRAL and other bodies, but that problem might certainly be avoided through an exchange of information between the bodies concerned.

53. Mr. KRISPIS (Greece) said that he would confine himself to making a few remarks on the uniform rules governing the international sale of goods. With regard to the other items, his delegation endorsed the decisions taken by UNCITRAL.

54. The draft Convention on the International Sale of Goods was, on the whole, satisfactory. However, it omitted subjects which normally belonged to the area of "sale of goods". For example, it was regrettable that as a result of a small majority in an indicative vote, UNCITRAL had decided in favour of deleting the draft article dealing with the interest which the buyer had to pay to the seller on the price of goods when he did not pay the price at the fixed time. It was true that it was difficult to draft a provision on the question of interest which would command wide acceptance, since public policy considerations in that connexion varied from country to country, in particular with regard to the highest rate of interest permitted. Nevertheless, it should be possible to overcome those difficulties: omission was not the best solution.

(Mr. Krispis, Greece)

55. On the other hand, the draft Convention dealt with subjects which did not normally come within the province of "sale of goods" proper. For example, article 26 dealt with industrial and intellectual property. That point had been raised for the first time in the discussion in Committee of the Whole I and had been studied by a working group of that Committee for two or three hours, which was clearly insufficient for such a complex question. Moreover, no observer from WIPO had been present. It was also regrettable that the word "reasonable" appeared about 25 times in the text of the draft; however, drafting questions could be resolved by the Conference of Plenipotentiaries.

56. With regard to the question whether the draft articles should take the form of optional uniform rules or that of an international convention, his delegation was in favour of an international convention. It had an open mind on the question whether the Conference of Plenipotentiaries to prepare a Convention on the International Sale of Goods should also examine the subject of the formation and validity of contracts. It would, perhaps, be preferable to convene two separate conferences.

The meeting rose at 5.10 p.m.