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THIRTY-FIRST SESSION

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SIXTH COMMITTEE

35th meeting

held on

Wednesday, 3 November 1976

at 10.30 a.m.

New York

SUMMARY RECORD OF THE 35th MEETING

Chairman: Mr. MENDOZA (Philippines)

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The meeting was called to order at 11.05 a.m.

AGENDA ITEM 108: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS NINTH SESSION (A/31/17; A/C.6/31/5 and Add.1: TD/B/C.4/148, 153) (continued)

1. Mr. BROWN (Australia) said that he could not state at present what would be his Government's final attitude to the draft convention on the carriage of goods by sea. The draft raised problems in that it did not refer to the multimodal carriage of goods, or container traffic, which was of growing importance. However, his delegation did find the draft satisfactory in many other respects and it therefore supported the convening, at an early date, of a conference of plenipotentiaries to consider it. It hoped that it would then be able to persuade other delegations of the need to widen the scope of the convention, either immediately or in the near future, to include multimodal transport.

2. By reason of their origin, the UNCITRAL Arbitration Rules should make it possible to bridge the gaps between the settlement procedures in use in the various economic systems of the world. However, as UNCITRAL had recognized in article 1, paragraph 1, of the Rules, it might be necessary for parties to agree to modify the Rules to meet their particular needs. The exact status of the model arbitration clause appended to article 1, paragraph 1, was not clear, and a number of lawyers would see its wording as requiring modification if it was not to give rise to difficulties in relation to persons who were not parties to the contract.

3. His delegation was glad to see that some of the points it had raised at the previous session had been reflected in the text of the Arbitration Rules. In particular, article 1, paragraph 2, acknowledged the existence of provisions of law which the Rules could not override. It was regrettable, however, that no provision had been made for the parties to challenge an award on the grounds of procedural or substantive error.

4. Although it was short, the Commission's report was sufficient to enable Governments to trace, with the aid of the documents to which it referred, the evolution of the texts adopted by the Commission. Clearly, the elaboration by the Commission of a commentary on the Arbitration Rules would have been of great help to users. However, the disadvantages of such a commentary might have outweighed its advantages. He hoped that the gap would be filled through the preparation by legal theorists of a reference document based on the Commission's preparatory work.

5. His delegation welcomed the progress being made in the preparation of a draft convention on the international sale of goods. UNCITRAL had rightly placed emphasis on the formation and validity of contracts, for unification of the rules relating to those matters ought to be of considerable help in creating the climate of confidence which was required for the development of international trade.

6. The question of international payments was also important and UNCITRAL should continue its work in that sphere. In that connexion, he hoped that the Commission

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(Mr. Brown, Australia)

would not assume that bills of exchange and promissory notes were the only suitable methods of payment by document. New forms of negotiable instruments more appropriate to modern trading conditions might be devised in the future and the Commission should, therefore, address itself to that issue too.

7. Australia, which had the honour to be a member of UNCITRAL, hoped that its participation through two of its experts in the Commission's work would be able to continue.

8. Mr. HUPENDA (Zaire) said that, in view of the short time his delegation had had to study the report of UNCITRAL, it would like to be able to speak on the item a second time if necessary.

9. His delegation had no difficulty with the first three parts of the draft Convention on the Carriage of Goods by Sea. It did, however, have reservations concerning article 16, in Part IV of the draft. Paragraph 1 of that article stated that if a bill of lading contained particulars concerning the general nature, leading marks, or weight or quantity of the goods which the carrier or other persons issuing the bill of lading on his behalf knew or had reasonable grounds to suspect did not accurately represent the goods actually taken over, the carrier or such other persons must insert in the bill of lading a reservation specifying those inaccuracies or grounds of suspicion. Paragraph 3 of that article, however, provided that, except for particulars in respect of which and to the extent to which a reservation permitted under paragraph 1 had been entered, the bill of lading would be prima facie evidence of the taking over or, where a "shipped" bill of lading was issued, loading, by the carrier of the goods as described in the bill of lading, and that proof to the contrary by the carrier would not be admissible when the bill of lading had been transferred to a third party, including any consignee, who in good faith had acted in reliance on the description of the goods therein. The provisions of that paragraph seemed to take no account of the good faith of the carrier and to encourage fraud at his expense. If trust could be placed in the good faith of the consignee or the shipper, was there any justification for casting doubt on that of the carrier? The conference of plenipotentiaries should review paragraph 3 in order to avoid creating situations which might be damaging to the carrier.

10. He thanked the Government of Belgium for having once again offered to nationals of developing countries fellowships for academic and practical training in international trade law at the University of Louvain.

AGENDA ITEM 106: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS TWENTY-EIGHTH SESSION (A/31/10) (continued)

11. The CHAIRMAN invited the members of the Committee to resume their unofficial consultations concerning the draft resolution on the report of the International Law Commission following the adjournment of the meeting.

12. Mr. GAVIRIA (Colombia) stated that the Latin American Group had not had the benefit of interpretation services at its meeting on the previous day, which had

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(Mr. Gaviria, Colombia)

been announced by the Chairman, and asked what procedure the regional groups should follow to obtain such services for their meetings.

13. The CHAIRMAN replied that an express request therefor should be made to the Secretariat each time interpretation services were required.

The meeting rose at 11.30 a.m.