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SIXTH COMMITTEE

41st meeting

held on

Thursday, 11 November 1976

at 10.30 a.m.

New York

SUMMARY RECORD OF THE 41st MEETING

Chairman: Mr. MENDOZA (Philippines)

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The meeting was called to order at 11 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. THEODORACOPOULOS (Greece) felt that the ninth session of UNCITRAL had been one of the most productive and expressed his appreciation to the Commission's Chairman and members.
2. His delegation attached major importance to the draft Convention on the Carriage of Goods by Sea, the provisions of which would be studied carefully by the competent authorities of his country, which would make known their final opinion thereon at a later stage. None the less, his delegation wished to make some preliminary remarks.
3. The current wording of article 1, paragraph 5, was satisfactory: it allowed for extension of the applicability of the draft Convention to all contracts of maritime carriage, whether written or otherwise. The draft would have been of less significance if UNCITRAL had restricted its scope solely to written contracts, overlooking long-established practices in the sphere of the carriage of goods by sea and modern methods applied by maritime transport companies.
4. His delegation also endorsed UNCITRAL's decision to retain article 3, concerning the interpretation of the Convention. By providing national courts with guidelines for the interpretation and implementation of the future Convention, the article facilitated the unification of national maritime legislation.
5. With regard to article 6, concerning the limits of the liability of the carrier, the monetary limit of liability should be based on the dual criteria of weight and the number of packages or shipping units.
6. His delegation found the draft Convention on the Carriage of Goods by Sea generally acceptable and supported UNCITRAL's decision to recommend that the General Assembly should convene an international conference of plenipotentiaries to conclude a Convention on the subject.
7. UNCITRAL's work in the sphere of international commercial arbitration was also very satisfactory. The UNCITRAL Arbitration Rules were well balanced and based on principles already accepted by many States. In addition, they filled a great vacuum in the sphere of international trade law and would contribute substantially to the development of trade relations among States. Consequently, his delegation endorsed UNCITRAL's decision to invite the General Assembly to recommend the use of the Arbitration Rules in the settlement of disputes arising in the context of international commercial relations.
8. His delegation welcomed the fact that the Working Group on the International Sale of Goods had completed its consideration of pending questions with respect

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(Mr. Theodoropoulos, Greece)

to articles 57 to 69 of the draft Convention on the International Sale of Goods and its second reading of the whole of the draft. The Working Group had been right to emphasize the question of the formation and validity of contracts. UNCITRAL should be able at its next session to decide whether rules on the formation and validity of contracts should be included in the draft Convention on the International Sale of Goods or in a separate convention.

9. His delegation noted with satisfaction the progress made in the sphere of international payments.

10. Mr. DUCHENE (Belgium) said that, on the whole, the competent authorities of his country approved of the report of UNCITRAL, and particularly of the UNCITRAL Arbitration Rules. However, his delegation regretted that those Rules were complicated and feared that they might sometimes be difficult to apply.

11. His delegation considered that the current text of the draft Convention on the Carriage of Goods by Sea did not adequately meet the concerns expressed by UNCITRAL at the end of its fourth session. Given the stage which had now been reached, it could only reserve its position with regard to the whole of the text, which in its view required further thorough study and discussion at both the national level and that of the conference of plenipotentiaries. In view of the complexity of the problems dealt with in the draft Convention and the already heavy schedule of international conferences in coming years, the conference of plenipotentiaries should not be convened too hastily. It was essential to give governments the time to make careful preparations for the conference, so that the Convention it adopted could be ratified by a large number of States.

12. On the subject of training and assistance in the field of international trade law, he announced that his Government had decided to renew for 1977 its offer of two fellowships for academic and practical training in that sphere.

13. Mr. WATANABE (Japan) said that UNCITRAL had done good work during its ninth session. The Arbitration Rules adopted at that session were the result of careful consideration of pre-existing rules and much deliberation by experts. Their intrinsic merit alone should encourage parties to a contract to agree to refer disputes pertaining thereto to arbitration under the UNCITRAL Rules. However, it would also be desirable for the General Assembly to recommend the use of the Rules in the settlement of disputes arising out of international commercial relations and for them to be widely circulated. Although the Rules were intended for optional use in ad hoc arbitration, he hoped that arbitral tribunals would make frequent use of all or part of them.

14. For the time being, he would refrain from commenting on the substance of the draft Convention on the Carriage of Goods by Sea, which would eventually replace the 1924 Brussels Convention and the 1968 Brussels Protocol. The draft Convention would govern maritime transport for a long time to come and that necessitated careful study of various problems, such as commercial customs and practice, technical developments in shipping, and the need to balance the interests of carriers and shippers. He pointed

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(Mr. Watanabe, Japan)

out that a number of the important provisions of the draft had been adopted by voting and, in some instances, by a very small majority. In that connexion, he believed that the utmost effort should be made to adopt legal rules on the basis of consensus. His delegation was ready to support the convening of a conference of plenipotentiaries to draw up a convention on the basis of the draft.

15. The Working Group on the International Sale of Goods had successfully carried out the task entrusted to it by completing the second reading of the draft Convention on the International Sale of Goods. It was to be hoped that, at its next session, UNCITRAL, too, would be able to consider that draft Convention.

16. With regard to the draft Uniform Law on International Bills of Exchange and International Promissory Notes, he expressed the hope that UNCITRAL would be able to deal with that topic as expeditiously as possible.

17. The information activities of UNCITRAL were no less important than those of Preparing draft conventions, since they helped foster common understanding, a necessary prerequisite for the unification and harmonization of international trade law. His delegation therefore welcomed UNCITRAL's decision to request the Secretary-General to organize a second symposium on international trade law. UNCITRAL could also compile and publish the texts of existing rules and conventions in the field of international trade law, which would be of great value not only to lawyers, but also to business circles. Finally, UNCITRAL must be able to expand the scope of its informative functions, including those in the field of training and assistance.

18. During its nine years of existence, UNCITRAL had completed its work on several priority items and would soon complete other priority items in its programme of work. Those results were all the more meaningful because the 36 States members of UNCITRAL were very representative of the various legal systems and economic interests of the world as a whole. The time had come, therefore, to review UNCITRAL's long-term work programme. In doing so, UNCITRAL should take into account the feasibility of each task and the extent of the need for work on particular topics. It was not easy to unify international trade law since national laws were deeply rooted in the customs and practice of each nation. Furthermore, the process of unification came up against many other obstacles, including differences in the economic and political interests of various nations. Thus far, UNCITRAL had proved itself equal to its task. It could be expected, therefore, to be able to proceed with its work, regardless of the obstacles, whenever it considered uniform law in a specific area to be feasible and necessary.

19. Lastly, his delegation supported the change which UNCITRAL suggested in the terms of office of its States members, in order to avoid difficulties over the composition of Working Groups.

20. Mr. KHOO (Chairman of the United Nations Commission on International Trade Law) said he had been particularly impressed during the debate on UNCITRAL's report on the work of its ninth session by the unanimous support of delegations for UNCITRAL's

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(Mr. Khoo)

work, which indicated that Governments approved of UNCITRAL's working methods and, generally, of the way in which it was carrying out its mandate.

21. The coming years would show whether the work of UNCITRAL would commend itself to the world at large. It need not be pointed out that the preparation by UNCITRAL of a draft convention on a given subject was only a first step towards the establishment of generally acceptable rules. The adoption of rules by the community of nations, and the subsequent ratification of a convention and its implementation, were further important steps in respect of which UNCITRAL played little part. Yet the first step was of very great importance, not so much because UNCITRAL was preparing a text on which a diplomatic conference could base its work, but rather because of the manner in which that text had been drafted. UNCITRAL had been able to adopt the text of a draft Convention on the Carriage of Goods by Sea because of the spirit of co-operation shown by its members and, above all, because they had avoided resorting to a vote as far as possible, and had endeavoured to arrive at decisions by consensus.

22. Over the years, UNCITRAL had become aware that, when it was necessary to make amendments to existing law which would have important legal and economic consequences, it was desirable, if not necessary, to endeavour to arrive at an agreement by consensus. Experience had shown that that method was possible and that, when a vote became necessary, the consensus approach led to the abandonment of extreme positions and to the adoption of texts which were not totally unacceptable to the minority. That approach, which had proved itself in UNCITRAL, should be applied throughout the whole process of international law-making in the commercial field.

23. He noted with satisfaction the unanimity with which the Sixth Committee had welcomed the adoption of the UNCITRAL Arbitration Rules. Without any doubt, the commercial world would welcome a recommendation by the General Assembly that those Rules should be used in international commercial arbitration proceedings. There were aspects of commercial law and practices that were better dealt with by legal instruments that did not require the formal approval of Governments, by way of ratification or enabling acts. The Arbitration Rules were the first instrument of that type to emerge from UNCITRAL, but should not be the last. In that connexion, he wished to assure the Committee that UNCITRAL would take the utmost care in consulting Governments before such instruments were finally drawn up. Those consultations would be greatly facilitated if the General Assembly authorized interested States to attend sessions of UNCITRAL and its Working Groups as observers.

24. All those who had spoken on the draft Convention on the Carriage of Goods by Sea had agreed that the draft should be the basic text for consideration at a conference of plenipotentiaries. Naturally, a number of provisions in the draft did not meet with the approval of all Governments but, if it were otherwise, there would be no need to convene a conference of plenipotentiaries. However, he was confident that a responsible and reasoned approach by Governments to the various issues raised in the Sixth Committee would make acceptable solutions

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(Mr. Khoo)

possible. If such was not the case, the international community would have to resign itself to making do for years to come with a system which was no longer in accord with modern concepts of justice. On the other hand, the adoption of a widely acceptable convention on such an important issue as the maritime transport of goods would show that the community of nations within the United Nations was capable of recognizing the interests of all.

25. Several delegations had rightly referred to the legitimate interests of UNCTAD in the matter of maritime transport, and they had suggested, following the recommendations of the UNCTAD Working Group on International Shipping Legislation, that the secretariat services for the forthcoming conference should be performed by the secretariats of UNCITRAL and UNCTAD. It had also been suggested that background papers setting forth the legal, economic and shipping trade aspects of the proposed Convention should be prepared jointly by those secretariats. Although he could not speak for the Secretary-General, he said he had no reason to doubt that UNCTAD staff would be called upon to serve that conference. Furthermore, he had had assurances from the representative of the Secretary-General and the Secretary of UNCITRAL that arrangements would be made for that purpose in consultation with the Secretary-General of UNCTAD. As to the background papers to be prepared jointly by the two secretariats, he recalled that at its most recent session, UNCITRAL had had a thorough discussion of the question of whether it should ask its secretariat to prepare a commentary on the UNCITRAL Arbitration Rules. Opinion had been very divided, but UNCITRAL had ultimately decided that there would be no commentary on the Arbitration Rules by its secretariat. That being so, it was not possible to ask the UNCITRAL secretariat to prepare a commentary on the draft Convention on the Carriage of Goods by Sea and to join with the UNCTAD secretariat in preparing background papers. However, there was nothing to prevent the UNCTAD secretariat from submitting studies or commentaries to the proposed conference. He said that he had spoken on that question so as to remove any doubts about the continuing collaboration between UNCITRAL and UNCTAD. UNCITRAL welcomed that collaboration, which should be extended to other matters.

26. UNCITRAL would probably be able to present a draft Convention on the International Sale of Goods to the General Assembly at its thirty-second session.

27. With regard to the UNCITRAL symposium on international trade law the importance of which for the developing countries had been emphasized by many representatives, he said that in order to finance it, UNCITRAL had to rely entirely on voluntary contributions. Unless further contributions were forthcoming, it would be unable to organize the symposium at its next session. The travel and subsistence of a participant from a developing country amounted to approximately \$2,000; he appealed to Governments to sponsor at least one participant by contributing that amount.

AGENDA ITEM 110: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (A/31/33, A/31/51 and Add.1; A/C.6/31/L.6)

28. Mr. BROMS (Chairman of the Special Committee on the Charter of the United Nations and on the Strengthening of the Organization) recalled that in operative paragraph 1 of resolution 3499 (XXX), the General Assembly had decided that the

(Mr. Broms)

Ad Hoc Committee established pursuant to General Assembly resolution 3349 (XXIX) of 17 December 1974 should be reconvened as the Special Committee on the Charter of the United Nations and on the Strengthening of the Organization and would continue its work in pursuance of the tasks enumerated in resolution 3499 (XXX). In the same resolution, the General Assembly had decided to enlarge the Ad Hoc Committee by the addition of Barbados, Belgium, Egypt, Iraq and Romania, and had requested the Secretary-General to prepare for the use of the Committee a study, to complement those submitted pursuant to General Assembly resolutions 3073 (XXVIII) and 3349 (XXIX), which should present analytically the views expressed by Governments with respect to the various aspects of the functioning of the United Nations, including those relating specifically to the Charter, and also to render all necessary assistance to the Committee, including preparation of summary records of its meetings. Lastly, the General Assembly had requested the Committee to submit a report on its work to the General Assembly at its thirty-first session.

29. The Special Committee, which had met at United Nations Headquarters from 17 February to 12 March 1976, had had before it an excellent analytical study by the Secretary-General (A/AC.182/L.2 and Corr.1), which had greatly facilitated its work. All the States members of the Special Committee had participated in that session.

30. In accordance with the agenda adopted at the 1st meeting, the Special Committee had held a general debate from its 4th to its 12th meeting.

31. At its 10th meeting the Special Committee had decided to establish a Working Group open to all its members, which was instructed to carry out, on the basis of the analytical study by the Secretary-General, the task entrusted to the Committee. It had been understood, however, that that would not prevent any delegation from submitting any other proposal in keeping with the mandate of the Special Committee.

32. In a first reading, the Working Group had considered paragraphs 4 to 42 of the 144 paragraphs of the analytical study. Preliminary comments had been made on the various views, suggestions and proposals reflected in those paragraphs, and additional proposals had also been presented. The Romanian delegation had submitted a document (A/31/51) in advance of the meeting which had assisted in focusing views. The delegations of Romania, Colombia, Mexico, Cyprus and the Philippines had submitted working papers which had been circulated, respectively, under the symbols A/AC.182/L.4, L.5, L.6, L.7 and L.9 and contained suggestions, observations and concrete proposals for the consideration of the Working Group.

33. Part II of the report of the Working Group contained a brief account of the comments on the views, suggestions and proposals submitted by Governments or by some delegations in the Working Group on the first 28 paragraphs of the analytical study. In accordance with the usual practice, the report did not attribute the comments to any delegation, that practice having always been considered conducive to frank and open discussion.

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(Mr. Broms)

34. In view of the size of the analytical study and the short time at the Group's disposal, the Working Group had considered only one third in the first reading. It was worth noting that there had been a feeling that the questions considered by the Special Committee were among the most difficult that it would have to face.

35. Many delegations had found it expedient to make specific comments on the part of the analytical study that the Special Committee had been unable to consider. Knowing immediately what position the various delegations were adopting on all the general problems raised in that study could not but facilitate the Special Committee's future work.

36. There was no need to examine in detail the views and proposals of Member States on the different paragraphs of the analytical study because they were self-explanatory. It was to be hoped that other delegations would make further comments, for those comments were the only sound basis for the future work of the Special Committee.

37. Without wishing to pass judgement on the work done by the Special Committee at its most recent session, he said he would like to emphasize that the atmosphere in the Special Committee had been a great improvement on that in the Ad Hoc Committee. At the most recent session of the Special Committee, contrary to what had happened in the Ad Hoc Committee, no one had asked for it to be discontinued. Once the Working Group had begun its consideration of the analytical study, its work had progressed expeditiously.

38. Certain new developments that had occurred since the end of the thirtieth session of the General Assembly and also the enlarged mandate entrusted to the Special Committee seemed to have encouraged the various delegations to work together in a spirit of greater co-operation. Although unanimous agreement had still not been reached, it seemed that most of those who had taken part in the discussions of the Special Committee or the Working Group had made it clear that they did not wish to undermine the fundamental principles laid down by the founders of the United Nations at the San Francisco Conference in 1945. The Committee had undertaken a long and exacting task. The results achieved thus far augured well for the future and, though many obstacles still had to be overcome, all the conditions for ensuring that the Special Committee's work was successful seemed to be present.

39. Mr. ROMULO (Philippines), introducing draft resolution A/C.6/31/L.6 on behalf of the sponsors, said that it was a long time since efforts had been initiated to improve the procedures and structure of the United Nations, with a view in particular to enhancing its role in the maintenance of international peace and security. It was not possible to treat an increasingly interdependent community of States in the same way as a world consisting of sovereign States which were separated from and opposed to one another. For the first time in the history of mankind, international affairs had taken on a global and indivisible character. The mutual responsibility of nations had increased but without being implemented to the degree it should have been. National interests, long the guide for inter-State relations, were now inseparable from the interests of the world community.

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(Mr. Romulo, Philippines)

40. Nothing was permanent but change, and never before had the world changed as rapidly as now. Peoples and institutions must adapt to new circumstances, failing which they would be condemned to disappear. The United Nations itself was not exempt from that eternal law. It was not change for change's sake that he was recommending, but change to enable nations to meet the challenge of a new world characterized by interdependence.

41. Although the founders of the United Nations could not have known how much the world would change in 31 years, they had realized the need to provide machinery for adaptation and change in the Organization. Thus, Article 109 of the Charter provided that, 10 years after the founding of the United Nations, an item on the convening of a conference for the review of the Charter should be placed on the General Assembly's agenda. Under the terms of that article, such a conference could be held at any time, at a date and place to be fixed by a two-thirds vote of the General Assembly and by a vote of any nine members of the Security Council. Any alteration of the Charter which was recommended at such a conference by a two-thirds majority would take effect when it had been ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council. It was routine practice to include such clauses for review in international treaties but, in the case of the United Nations Charter, those provisions had never been applied.

42. The item under consideration was not concerned with a wholesale review of the United Nations Charter, in the sense of Article 109. Its purpose was far more modest, yet great practical benefits could be derived from it. The terms in which the item was couched and the manner in which it was being studied provided Member States with the assurance that they could submit and freely discuss any suggestion for improving the functioning and structure of the United Nations, whether or not such suggestions required changes in the Charter. Nobody would disagree that the use of the term "enemy States" in the Charter was not only anachronistic but also slanderous, and that it tended to perpetuate hatreds and antagonisms which should be forgotten.

43. The Ad Hoc Committee on the Charter of the United Nations, established in 1974 pursuant to General Assembly resolution 3349 (XXIX) and reconstituted in 1975 pursuant to resolution 3499 (XXX) as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, had been proceeding in a most circumspect but deliberate manner. The analytical study carried out by the Secretariat grouping the views and proposals of States according to subject, which formed the basis for the work of the Working Group established by the Special Committee, was very valuable. The discussions of the Special Committee, whose membership had been enlarged, had already resulted in a whole range of fresh ideas for improving the structure and functioning of the United Nations.

44. The misgivings entertained by some members before the Special Committee started its work had proved to be groundless. The foundations of the United

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(Mr. Romulo, Philippines)

Nations had not been shaken, its principles had not been challenged and its validity as the central world Organization had not been in the least threatened. On the contrary, it was precisely because the premises on which the United Nations was based were regarded as sound, and because of the deep respect of States for the Charter and its principles, that the question of improving the functioning and structure of the United Nations had arisen.

45. The Special Committee's meetings provided the two thirds of the Members which had not been present at the founding of the United Nations with the opportunity to take part in the process of its further refinement. Whereas 51 States had taken part in the San Francisco Conference in 1945, the United Nations now had 145 Members. Those Members should be given the opportunity to express their views and to formulate suggestions for improving the United Nations Charter, in the light of the changes that had taken place during the past 30 years.

46. In view of the limited scope of the Special Committee's mandate, neither its establishment nor its work should evoke any opposition. Thus it should, for example, confine itself to drawing up a list of the proposals made by its members, with an indication of those which had aroused special interest. Now that the Special Committee had demonstrated its value, many Members who had been reluctant to participate were playing a constructive part in its work. It was to be hoped that contributions would soon be forthcoming from all Members of the Special Committee so that its value would be maximized.

47. Draft resolution A/C.6/31/L.6 was very simple. It took note of the Special Committee's report and recommended that the Special Committee should pursue its work in fulfilment of its mandate. Also, Governments were invited to submit or bring up to date their observations and proposals.

48. As the timing of the 1975 session had been much more convenient than that of the 1974 session, he suggested that the Special Committee should set the date for its 1977 session at a similar time.

49. The continuation of the Special Committee's work should arouse considerable interest. It was obviously the duty of States to improve and perfect the United Nations in the interest of both present and future generations.

50. Lastly, Brazil, India, Jamaica, Mozambique and Yemen had been added to the list of the sponsors of draft resolution A/C.6/31/L.6.

The meeting rose at 12.20 p.m.