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SUMMARY RECORD OF THE 5th MEETING

Chairman: Mr. TURK (Austria)

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The meeting was called to order at 10.10 a.m.

AGENDA ITEM 143: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SECOND SESSION (continued) (A/44/17)

1. Mr. MIKULKA (Czechoslovakia) said that the draft Convention on the Liability of Operators of Transport Terminals in International Trade, which added to the series of international instruments elaborated by the United Nations Commission on International Trade Law (UNCITRAL), filled a gap in the regulation of liability issues arising from goods in international transport. An advantage of the draft Convention was that it specified the conditions governing the liability of operators and represented a new step forward in the unification of international law and the strengthening of the legal guarantees in international trade. Moreover, to the extent that international conventions took precedence over national laws and regulations, the future convention would make the work of sales representatives considerably easier by skirting the maze of national State regulations under which their goods were taken in charge by operators.
2. His delegation welcomed the fact that the draft Convention left no questions outstanding, with the exception of the decision as to the amounts of the limits of liability, which would undoubtedly be resolved in a satisfactory manner.
3. The future convention should be adopted as widely as possible. Accordingly, he supported the UNCITRAL proposal for the convening, at the earliest opportunity, of a diplomatic conference which would enable all Member States to participate in the consideration of the convention, thus encouraging them to become parties to it.
4. He welcomed the progress made in the preparation of model rules on international payments and a model procurement law, as well as the fact that UNCITRAL had included in its programme of work for 1990 the question of the legal aspects of international countertrade operations.
5. With regard to the status of UNCITRAL conventions, the Czechoslovak Parliament was currently considering ratification of the Convention on the Limitation Period in the International Sale of Goods and the Protocol amending that Convention. Moreover, Czechoslovakia had signed the Hamburg Rules and hoped that they would enter into force as soon as possible.
6. He hoped that the Commission's long-term programme of work would include initiating efforts for the unification of other types of contracts used in international trade.
7. Mr. BERRY (Australia) said that while he supported in principle the Commission's work on the draft Convention, particularly in view of its potential to fill gaps in liability régimes established by international transport conventions such as the Hamburg Rules and the United Nations Convention on International Multimodal Transport of Goods, he considered that the draft Convention should now be subjected to thorough scrutiny in a diplomatic conference, and that articles 1,

(Mr. Berry, Australia)

4, 7, 8, 9, 10, 15 and 24 in particular needed clarification. Accordingly, he supported the Commission's recommendation to the General Assembly for the convening of such a conference.

8. He continued to support the actions undertaken by the Commission with regard to the promotion and adoption of UNCITRAL texts, and welcomed the Secretariat's report on the progress made so far in that area, as the Commission's success would ultimately depend on the extent to which its texts were adopted and implemented.

9. With regard to training and assistance, he welcomed the Commission's increased efforts to organize or co-sponsor seminars and symposia on international trade law, and its plans for similar events in the future. His country had consistently supported training and assistance, and had organized each year since 1974 international trade law conferences which provided for exchanges of views, particularly within the Asian and Pacific region.

10. However, he did not intend to suggest that the development of new legal texts should be a secondary concern for UNCITRAL.

11. His delegation attributed major importance to the Commission's examination of legal issues arising from new technology in areas such as electronic fund transfers. The Working Group on International Payments was to be commended on the progress made so far in the formulation of model rules on such transfers, and he hoped that the continuation of its work would result in a model law which struck an appropriate balance between the rights of the parties involved in such transactions.

12. In view of the importance of procurement to many countries, and the high value of government contracts in world trade, he supported the continuation of the Commission's work on the preparation of a model procurement law. In the context of the new international economic order, it was highly desirable that the Commission should involve itself in such projects, as they would help developing countries to participate more effectively in international trade.

13. A greater degree of certainty and uniformity with regard to the régime of rules on guarantees and stand-by letters of credit would be clearly beneficial. He therefore believed that there was merit in the recommendation for UNCITRAL to initiate work on a uniform law in that field, provided that a sufficiently specific and generally acceptable text could be developed.

14. Bearing in mind the upsurge in international countertrade and the rising level of interest in the topic in recent years, he also thought that the Commission should continue its work on the preparation of a legal guide on drawing up countertrade contracts. The draft outline of the possible content and structure of such a legal guide prepared by the Secretariat provided a reasonable basis for future work.

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15. Mr. SOTIROV (Bulgaria) said that the development of international trade and economic relations on the basis of equality and mutual advantage was an important factor in the broadening and improvement of co-operation between States and the strengthening of international peace and security, while the building of a stable legal basis for international trade exchanges was a significant element in the development of equitable trade and economic relations between States of different social, economic and legal systems. His country had repeatedly demonstrated its readiness to promote international trade and economic co-operation and attached considerable importance to the Commission's work, and commended its efforts to harmonize and unify international trade law.

16. The Commission had made a noteworthy contribution to the study and harmonization of contract practices in various fields of international trade and economic relations, particularly by unifying the legal norms regulating the liability of operators of transport terminals in international trade. The draft Convention elaborated at the twenty-second session of UNCITRAL supplemented the rules governing the international transport of goods as stipulated by different transport conventions. From a practical point of view, the adoption of a well-balanced legal document, based on a compromise among various legal systems, would have important consequences for the regulation of international trade exchanges.

17. In order to get the convention adopted and implemented by the greatest number of States, the representatives of all States concerned, including those which were not members of UNCITRAL and had not taken part in preparing the draft, as well as representatives of business circles and experts in international transport law must be able to participate in the final consideration and adoption of the document. His delegation therefore supported UNCITRAL's recommendation that an international conference be convened under United Nations auspices to adopt the final text of the convention in 1991.

18. Preparation of a model procurement law by the Working Group on the New International Economic Order would facilitate the progressive development of international trade law and would be favourably received by States that wished to update their national legislation in that field and that would thereby be given an opportunity to regulate their procurement procedures in a manner that suited their needs, their situation and their purposes. Lastly, he supported UNCITRAL's decision to continue with the preparation of a legal guide on countertrade because such a guide would help solve the problems posed by that kind of operation.

19. Mr. ASTAPENKO (Byelorussian Soviet Socialist Republic) said that affirmation of the principle of the primacy of law in international relations had created the pre-conditions for strengthening the role of UNCITRAL as a United Nations body charged with bringing uniformity to the legal principles governing international economic relations. More and more States were becoming party to the conventions arising from UNCITRAL's work; that included Byelorussian SSR, which had decided to accede to the Convention on the Limitation Period in the International Sale of Goods.

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(Mr. Astapenko, Byelorussian SSR)

20. The Byelorussian SSR's keen interest in questions of legal regulation, and particularly those which UNCITRAL dealt with, was linked to the restructuring of economic and political machinery that was under way in that country. The restructuring process had reached a very important stage with the adoption in the previous month of a decree on priority measures to enable the Byelorussian SSR to achieve, starting in 1990, a new economic status based on self-management and self-financing. The decree provided specifically that, as from 1990, the Byelorussian SSR would decide on issues linked to the establishment of economic organizations in the country and in the region, the establishment of direct production relations and scientific and technical relations with foreign enterprises, and the organization of international exhibitions and trade fairs. For that purpose, the Byelorussian SSR would set up its own currency fund and decide itself how to use it.

21. As its report indicated, UNCITRAL had given priority at its most recent session to finalizing the draft Convention on the Liability of Operators of Transport Terminals in International Trade prepared by the Working Group on International Contracts Practices. His country welcomed UNCITRAL's decision to give that draft the form of the convention, which would fill many gaps and contribute to the standardization of law in that area.

22. His delegation welcomed the progress made in the formulation of model rules on electronic fund transfers and a model procurement law, and it welcomed UNCITRAL's decision to prepare a model law on guarantees and a legal guide on countertrade. It hoped that UNCITRAL would continue to prepare new legal texts to make international trade law uniform.

23. Mr. DELON (France) stressed the usefulness and quality of the draft Convention on the Liability of Operators of Transport Terminals in International Trade prepared by an UNCITRAL working group, based largely on the 1978 Hamburg Rules (on the carriage of goods by sea); it would undoubtedly prove to be an important new UNCITRAL contribution to the development of international trade law. His delegation had expressed reservations in respect of UNCITRAL's recommendation to convene a diplomatic conference to adopt the text but, it did not wish the final adoption of the document to be delayed because of disagreement on that point and would not oppose adoption of the recommendation.

24. France, like all member countries, had always stressed the usefulness and advantages of training efforts undertaken by the Secretariat in order to make UNCITRAL's work and accomplishments better known, and it thanked the Secretary of UNCITRAL for the quality of the work he had done personally in that respect. It was also pleased with the state of progress of other UNCITRAL efforts, particularly in respect of letters of credit and guarantees, as well as procurement by electronic means.

25. Mr. ROMPANI (Uruguay) said that his delegation basically approved the draft Convention on the Liability of Operators of Transport Terminals in International Trade to which most of the UNCITRAL report was devoted. It also approved

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(Mr. Rompani, Uruguay)

UNCITRAL's programme of activities to the extent that they involved the study of questions relating to international trade in greater depth and the preparation of draft conventions to supplement existing texts in the area of international trade law.

26. Mr. THIAM (Guinea) said that the results of UNCITRAL's work on standardization of the rules of trade law provided the basis for international co-operation based on interdependence and justice that would lead to a more stable international economic order.

27. In respect to the draft Convention on the Liability of Operators of Transport Terminals in International Trade, it was better to adopt uniform rules in the form of a convention rather than a model law because the procedure for adopting an international convention, which allowed plenipotentiaries of States to examine the text in depth, expedited its adoption and made its adaptation to domestic legislation easier. His delegation therefore fully supported the convening of a diplomatic conference for the purpose of adopting the draft convention.

28. In respect of international payments, his delegation shared the view that the model law should deal with all international transfers, whether electronic or paper-based.

29. In respect of the new international economic order, the existing imbalance in international trade, characterized by unilateral price-setting by the North, meant that markets must be restructured. Noting that UNCITRAL had decided to give priority to procurement, he pointed out that the new international economic order included many other equally important issues that must be discussed. Moreover, existing regional arrangements in respect to procurement should not, in his view, give rise to protectionist practices prejudicial to international co-operation.

30. His delegation could not support the idea of preparing a legal guide on countertrade, because that kind of trade introduced elements of narrow bilateralism and arbitrary price-setting to the detriment of multilateralism. Since the developing countries were already victims of unilateral price-setting, as the current coffee and cocoa crisis showed, preparation of a legal guide on countertrade would be tantamount to approving that type of operation, which placed the economies of the poor countries at the mercy of the rich countries.

31. Lastly, his delegation felt that greater priority must be given to UNCITRAL's training and assistance activities, which were of great importance to the developing countries. His country would greatly welcome a seminar on all of UNCITRAL's work, which would do much to make known and to disseminate the texts of the uniform rules as well as the comments that made them accessible to experts in economics and law in the developing countries.

The meeting rose at 10.55 a.m.