



**STATEMENT BY MR. INDER JIT, MEMBER OF THE INDIAN DELEGATION,  
ON AGENDA ITEM 79: REPORT OF THE UN COMMISSION ON  
INTERNATIONAL TRADE LAW [UNCITRAL] ON THE WORK OF ITS 38<sup>TH</sup>  
SESSION IN THE SIXTH COMMITTEE OF THE 60<sup>TH</sup> SESSION OF THE UN  
GENERAL ASSEMBLY ON OCTOBER 03, 2005**

Mr. Chairman,

As this is the first time my delegation is taking the floor at this session, we would like to congratulate you on your election as Chairman of the Sixth Committee and assure you of our full co-operation and support. I would also like to congratulate the other members of the Bureau on their election.

We are pleased to note that the thirty-eighth session of the UN Commission on International Trade Law [UNCITRAL] has been a very productive one. The Commission adopted the Draft Convention on Electronic Contracting which seeks to harmonize national laws on execution of electronic contracts. We believe that this is another step forward towards harmonizing domestic legislation that would overcome the legal uncertainty in international business transactions where contracting parties are from different countries.

Mr. Chairman,

The provisions of the Draft Convention deal with determining a party's location in an electronic environment; the time and place of dispatch and receipt of electronic communications and the use of automated message systems for contract formation. The Draft Convention also sets out provisions dealing with criteria establishing functional equivalence between electronic communications

and paper documents – including “original” paper documents – as well as between electronic authentication methods and hand written signatures.

The Draft Convention incorporates many of the essential principles of the Model Law on Electronic Commerce, including party autonomy and legal recognition of electronic communications. However, some principles have been significantly modified to meet the need for greater certainty required in a convention, especially provisions on the time and place of contract. New principles have also been incorporated in the Draft Convention, including invitations to make offers, use of automated information system, and errors in electronic communications, mainly addressing new legal concerns that have arisen since the release of the first Model Law 1996.

Mr. Chairman,

My delegation would like to express its appreciation to the Working Group on Electronic Commerce for providing a readily accessible model for on-line contracts dealing with the sale of goods. We sincerely hope that the Convention would not only provide legal certainty by establishing uniform legal terms for e-commerce and lower transaction costs but would also fulfill its stated purpose of assuring companies and traders around the world that contracts negotiated electronically are as valid and enforceable as traditional paper-based transactions. This initiative is extremely significant. Earlier UNCITRAL initiatives in e-commerce have taken the form of “model” laws, which signatories could choose to follow in domestic legislation. This instrument, however, goes much further. If agreed, signatories would be agreeing directly to recognize common terms in contract law.

Mr. Chairman,

The Working Group on Arbitration has made efforts to reconcile differing positions on the issue of ex parte interim measures. One such effort was the new opt-out proposal relating to draft Article 17 of the Model Law on International Commercial Arbitration. We believe that incorporation of an opt-in clause instead of the proposed opt-out option is more appropriate, as it would give discretion to the parties to opt for preliminary orders if required keeping in view the nature of the dispute.

The Working Group on Transport law has made progress on a number of difficult issues. The Working Group at its 15<sup>th</sup> session held in New York, in April 2005, focused on issues relating to freedom of contract, jurisdiction and arbitration. The issue of freedom of contract has gained momentum in this Working Group because of a proposal for inclusion of "volume contracts" within the scope of the draft legal instrument. Traditionally, these contracts are excluded from the contract of carriage. However, in view of the increasing number of such contracts in practice, the Working Group agreed for its inclusion in the draft legal instrument. However, it was reiterated that such contacts should not be permitted to derogate from the mandatory provisions of the Convention relating to maritime safety, liability, jurisdiction and protection of third parties. On liability, the Working Group accepted the "one way" approach where the contractual reduction of liability is not permitted but its enhancement can be allowed. We welcome the inclusion of new provisions in the field of international transportation on "right to control" and "transfer of rights". This would involve extensive examination of a number of related issues including method and procedure for transfer of rights, which may result in subrogation of the contracting party.

Mr. Chairman,

We also note with satisfaction the progress made in other working groups. We are confident that the Commission will be able to carry out its ambitious plans for further development of the international legal instruments in the field of international trade law.

Thank you, Mr. Chairman.

**BACK TO TABLE OF CONTENTS**