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Chairman: Mr. FERRARI-BRAVO (Italy)

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The meeting was called to order at 11 a.m.

TRIBUTE TO THE MEMORY OF MR. NEHMEMIAS GUEIROS

1. The CHAIRMAN said he had just been informed of the recent death of Mr. Nehmemias Gueiros, who had been Chairman of UNCITRAL at its tenth session and Vice-Chairman at its eleventh session. On behalf of the Committee and on his own behalf, he wished to convey condolences to the delegation of Brazil.
2. Mr. SETTE CAMARA (Brazil) said the death of Professor Gueiros had been a great loss for the international community. He had been a great jurist, an outstanding professor and a brilliant publicist and had made a valuable contribution to UNCITRAL ever since its inception. He would convey to the Brazilian Government and to Mr. Gueiros' family the Chairman's expressions of condolence.

AGENDA ITEM 115: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS ELEVENTH SESSION (continued) (A/33/17, A/33/177; A/C.6/33/L.2 and L.3)

3. Mr. RAJAN (Singapore) commended the excellent work done by the Commission and the lucid presentation of the report (A/33/17) by its Chairman.
4. He welcomed the Commission's decision, referred to in paragraph 18 of the report, to integrate the draft Convention on the Formation of Contracts with the draft Convention on the International Sale of Goods into a single text. He also welcomed the proposal to allow partial ratification, i.e., ratification of the Convention by a State party either in respect of the formation of contracts alone, in respect of sales alone or in respect of both. That would meet the position of States which might not be ready as yet to ratify the whole Convention but were prepared to accede to one or the other of its separate parts.
5. The recommendation to convene a conference of plenipotentiaries to conclude the Convention on Contracts for the International Sale of Goods and to consider the desirability of preparing a protocol on the limitation period in the international sale of goods merited favourable consideration. International trade would benefit significantly. His delegation also saw merit in the Commission's decision to request the Working Group on Negotiable Instruments to continue its work.
6. Mr. OZDZHONIKIDZE (Union of Soviet Socialist Republics) said the Soviet Union attached great importance to the development of trade and economic relations among States for the benefit of all peoples. It was in that light that it viewed the activities of UNCITRAL which should make an important contribution to the unification of international trade law. Trade relations based on equitable dealings and mutual advantage, non-discrimination and consideration for the interests of partners, provided a basis for the achievement of peaceful and good-neighbourly relations between States, which would help to strengthen the process

(Mr. Ozdzhonikidze, USSR)

of détente and also create an atmosphere of trust and mutual understanding between peoples.

7. His delegation was pleased to note that the Commission had decided to include in the draft Convention on the Formation of Contracts for the International Sale of Goods an important article to the effect that an offer, acceptance or other indication of intention, if made in any other form than in writing, did not apply where any party had his place of business in a State which had made the necessary declaration when signing, ratifying or acceding to the Convention. The Soviet delegation also supported the decision of the Commission to integrate the draft Convention on the Formation of Contracts for the International Sale of Goods with the draft Convention on the International Sale of Goods into a single text entitled "Draft Convention on Contracts for the International Sale of Goods", containing provisions on the formation of contracts and on the sale of goods, as well as general and final provisions. The final provisions of the draft Convention to be prepared by the secretariat of the Commission should contain a clause permitting the application of provisions of other conventions on the questions covered by the new convention, where both parties to the contract had their places of business in States parties to such conventions. That would ensure the possibility of the application, between States that were members of international economic organizations, of agreements elaborated in those organizations.

8. With regard to the convening of the conference for the adoption of the Convention on Contracts for the International Sale of Goods it was necessary to take into account the experience of similar international conferences held under the auspices of the United Nations. Such experience showed that set time-limits and good organization made for effective and fruitful work. For that reason the conference under consideration should not be held in two separate sessions. A simple session would enable the Organization to make substantial savings in funds from the regular budget of the United Nations.

9. As for the long-term programme of the Commission's future work, the Commission should, first of all, complete its work on matters covered in its first programme. The fact that work had been done on specific, clearly defined issues in special working groups had significantly contributed to the achievement of positive results in the implementation of the first work programme. Questions of major importance that were broad in scope must also be included in the new programme of work. At the same time it was necessary to avoid duplicating the work of other bodies, as that would be costly and diminish the effectiveness of UNCITRAL's activities. It was therefore particularly important to strengthen the co-ordinating role of the Commission in the field of international trade law.

(Mr. Ozdzhonikidze, USSR)

10. One topic for future consideration by the Commission was the legal implications of the new international economic order. His delegation's position on that question was well known. The Soviet Union firmly supported the struggle of the developing countries to restructure international economic relations on a just, democratic basis and therefore advocated the acceptance of the international level of recommendations which would assist in the elaboration of agreed measures for the eradication of protectionism and discrimination in international trade. In order to solve the problem of establishing a working group for the study of that entire problem, a definite material basis was needed. It was necessary to determine what questions the group would deal with, in what sequence and to what end. Otherwise the working group would only discredit the whole idea of its establishment and would not contribute to the discussion of that important issue. The Commission's decision to have a working group but to postpone its actual formation until the following session was therefore premature.

11. With regard to the question of training and assistance in the field of international trade law his delegation, while noting the usefulness of that work, considered that the costs of holding the UNCITRAL symposium in 1980 should be covered by voluntary contributions from interested States and not by the already over-inflated regular United Nations budget. The Soviet delegation approved of the Commission's practice of holding alternate sessions in New York and Geneva, and stressed the importance of taking decisions on the basis of a consensus. The work of the Commission could be effective only when decisions were acceptable to all of its members, representing various groups of States.

12. Mr. SEALY (Trinidad and Tobago) said UNCITRAL was to be congratulated on having completed the draft Convention on the Formation of Contracts for the International Sale of Goods. The text represented a most judicious blend of the Anglo-American common law system and the civil law systems, so that in very few instances would persons called upon to advise their clients in different countries find the language of the Convention or the concepts contained therein unfamiliar. That was a tribute to the great skill demonstrated by the expert representatives of Governments on the Commission, as well as by the International Trade Law Branch of the Office of Legal Affairs. Since the draft Convention on Contracts for the International Sale of Goods, set forth in paragraph 28 of UNCITRAL's report, would be submitted to Governments and interested international organizations for comments and proposals and that procedure would enable Governments to review past conventions as a whole and to prepare themselves for active participation in a plenipotentiary conference, his delegation could support the Commission's decision in paragraph 27 of its report, including the recommendation concerning the convening of a plenipotentiary conference.

13. With regard to article 6 of the draft Convention, although the Commission had, after a long debate, decided to include the concept of good faith, which was a novel acquisition in international trade law, it had decided against including in article 6 a proposal that the parties should also observe the principle of "fair dealing" in their relations. Draft article 6 represented a compromise between those who had not favoured the inclusion of either of those concepts and those who

(Mr. Sealy, Trinidad and Tobago)

had felt the need to inject high moral standards into the conduct of international business. His delegation could support the existing formulation but could also have supported the requirement that the principle of "fair dealing" be observed. Such a provision would, in his delegation's view, go some way towards mitigating the rigours of the caveat emptor maxim, particularly in instances where the buyer had to rely on the expert knowledge of the seller, as for example in certain relationships between developed and developing countries. In any event, the requirement concerning the observance of good faith, if broadly interpreted, could serve the same end.

14. With regard to article 12, the existing wording was again a compromise between those who felt that a proposal could not be considered an offer if it did not either fix the price or make provision for its determination and others who considered that in some instances international commercial practice permitted the formation of contracts without fixing of the price. The compromise system accepted by the Commission closely resembled section 8 of the English Sale of Goods Act of 1893 and was therefore acceptable to his delegation, but he nevertheless felt that what was meant by a fixing of the price implicitly should be spelt out, i.e., by specific reference to past dealings between the parties or common knowledge in the particular trade, so as to restrict the situations in which a price could be implied.

15. His delegation believed that the draft Convention would be considered beneficial by Governments, since it would greatly facilitate the diversification of trade patterns and the establishment of new trade relations with non-traditional sellers and buyers which was a reflection of the general trends of the export policies of many developing countries.

16. Turning to the future programme of work of the Commission, his delegation could support UNCITRAL's selection of several topics for priority consideration from among a list of very interesting proposals from many countries, both developed and developing, as well as from the socialist countries of Eastern Europe. With regard to the item relating to transportation, it would seem necessary for UNCITRAL to hold consultations with UNCTAD, and particularly with its Committee on Shipping, in order to avoid overlapping and costly duplication. His delegation could therefore support the Commission's decision set forth in paragraph 69 of the report. In connexion with paragraph 4 of that decision, he hoped that the Secretary-General, in submitting to the Commission at its twelfth session studies on priority items selected from the programme of work, would also identify the particular aspects of the subject which needed attention in the interest of the betterment of the conditions of trade.

17. He complimented the representatives of Egypt, Ghana, India, Kenya, Nigeria, the Philippines, Singapore and the United Republic of Tanzania on their initiative with respect to the new international economic order in the context of the work of UNCITRAL and welcomed the Commission's decision to establish a Working Group on the New International Economic Order to examine the Secretary-General's proposals relating to aspects thereof which were suitable for inclusion in the Commission's

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future programme of work. The framework within which trade took place had been revolutionized by the decisions of the sixth and seventh special sessions of the General Assembly, and it was therefore necessary to ensure that commercial practice conformed to the broad objectives of the new international economic order, through the development of a more equitable law of international trade. He could therefore support the decision in paragraph 71 of the Commission's report and looked forward to receiving in due course the relevant report by the Secretary-General.

18. His delegation had taken note of the decision of the Commission, set out in paragraph 78 of the report, to leave it to the Secretariat to propose a suitable date for the holding of the second symposium on international trade law as soon as the prospects for the symposium became clearer. His delegation expected that the Secretariat would give its usual prompt attention to that subject, in view of its importance for the creation of a cadre of trained international trade law specialists from all countries, including, in particular, the developing countries, for whose external financial and trade relations the former administering Powers had been primarily responsible in the past. With regard to the funding for the symposium, his delegation believed that the suggestions contained in paragraph 6 of document A/33/177 were reasonable. In addition, those Governments which were in a position to do so could offer to meet the costs incurred by their respective nominees.

19. His delegation commended UNCITRAL's report and paid a tribute to the dedication of all involved in the harmonization of international trade law in the wider context of improved prospects for global economic co-operation.

20. Mr. MAGNAVITA (Brazil) expressed his delegation's gratification at the signing of the United Nations Convention on the Carriage of Goods by Sea, which had special significance for the Sixth Committee, since the Convention was based on the preparatory work done by UNCITRAL.

21. His delegation commended the draft Convention on Contracts for the International Sale of Goods and the work done by the Drafting Group in integrating the draft Convention on Formation and the draft Convention on the International Sale of Goods into a single text. His delegation also supported the recommendations addressed to the General Assembly with a view to convening a conference of plenipotentiaries to conclude the Convention on Contracts for the International Sale of Goods and to prepare a protocol to that convention, dealing with the limitation period in the international sale of goods.

22. His delegation understood that the Working Group on International Negotiable Instruments would soon be approaching a final stage in the elaboration of a convention on international bills of exchange and international promissory notes.

23. UNCITRAL's decision to include the topic of the legal implications of the new international economic order in its work programme was pertinent and timely and deserved support. UNCITRAL's main task was precisely to render compatible and more widely acceptable rules on trade that would apply to different legal, social and

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(Mr. Magnavita, Brazil)

economic systems. While his delegation was fully aware of the dangers of bringing into an eminently technical forum a subject which had strong political connotations, it understood that substantial technical work would be undertaken by the secretariat so that the Commission would be able to engage in the exercise in the same purely technical way which had characterized its treatment of all other subjects.

24. With regard to the future work of UNCITRAL, he agreed with the recommendation that priority should be given to the subjects referred to in paragraph 67 of the report.

25. With regard to the decision concerning the transfer of the Commission's secretariat to Vienna, in accordance with General Assembly resolution 31/194, he trusted that, whatever the final decision, the secretariat would take all appropriate measures to ensure the continuation of UNCITRAL's customary high standard of work, and it was to be expected that the reference library needed for UNCITRAL's work would be provided in Vienna as soon as possible.

26. Mr. WANI (Uganda) said the sale of goods was one of the most important aspects of international trade and it was therefore fitting that the Commission had devoted most of its eleventh session to the harmonization and unification of laws on that subject. He welcomed the Commission's wise decision to integrate the draft Convention on the Formation of Contracts and the draft Convention on the International Sale of Goods into a single text, the draft Convention on Contracts for the International Sale of Goods. On the whole, his delegation commended the high quality of the draft, which was a reflection of the technical expertise and pragmatism of the members of the Commission. He was aware that many of the sensitive provisions represented a compromise designed to make the text more acceptable to countries with a wide diversity of legal, social, economic and political systems.

27. His delegation was not sure that article 6 was definitive enough. In particular, it was unsure of the meaning that might be attached to the words "its international character". Furthermore, the reference to "good faith" in that article was not well defined. It was not clear what impact those words had on the formation of contracts of sale. If they in no way affected the existence or validity of a contract, his delegation did not quite understand their inclusion.

28. His delegation had some difficulties also with the concept of "usage" in article 8. Since international trade had not been uniform and harmonized, especially in relations between developed and developing countries, it was inaccurate to talk of usage known to the parties and which was widely known in international trade. In order to achieve fairness in international trade, especially between developed and developing countries, the concept of usage must be better defined and more acceptable.

29. His delegation's view on the issue of price determination in contracts of sale was similar to those of many third world countries. Price was one of the most important aspects of international contracts, and if it was not determined it was scarcely possible to say that there was an offer or even a contract. While he wished to view the compromise in article 12, paragraph (1), of the draft as capable of further improvement along his delegation's line of thought, he had not quite been able to reconcile it with article 51.

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(Mr. Wani, Uganda)

30. He endorsed the Commission's decision regarding the convening of a conference of plenipotentiaries to conclude a convention on the basis of the draft. The conference should last long enough to deal with all the issues in the necessary detail, particularly since it was also wisely recommended that it should consider the desirability of preparing a protocol on the limitation period in the international sale of goods.

31. His delegation noted with appreciation the Commission's decision on its future programme of work (A/33/17, para. 69). The priority topics listed in paragraph 67 of the report were of great global significance. Of especial interest to Uganda as a developing country was the decision to include in the list the topic on the legal implications of the new international economic order. His delegation was particularly gratified that the resolution on the Commission's future programme of work adopted at the nineteenth session of the Asian-African Legal Consultative Committee had been favourably considered by the Commission. In his view, the principles and objectives of the new international economic order had been defined clearly by the resolutions of the sixth and seventh special sessions of the General Assembly. That was an area where the Commission's expertise and the specialized knowledge of the secretariat could be pragmatically used with a view to the development of the legal régime necessary for the establishment of the new order.

32. With regard to the decision contained in paragraph 71 of the report, the decision in paragraph 3 to establish a Working Group 'to examine the report of the Secretary-General in order to make recommendations as to specific topics which could appropriately form part of the programme of work of the Commission' might be improved upon. Paragraph 2 (a) of that decision already requested the Secretary-General to undertake such a study and make the necessary recommendations after due consultations with other bodies. It would be superfluous to establish a working group to do exactly what the Secretary-General had been requested to do. If the Committee agreed in principle to the establishment of a working group, the mandate of such a group should be a kind of progressive follow-up to the recommendations of the Secretary-General.

33. Uganda attached great importance to the Commission's training and assistance programme and commended the Commission, and especially the Government of Belgium, for their efforts and assistance in that field.

34. On the question of the transfer of the secretariat of UNCITRAL to Vienna, the best interests of the Commission, rather than those of individuals, should be paramount. The Secretary-General had already been given the relevant mandate, and his delegation was confident that he would fulfil it according to the most optimistic expectations.

35. He noted with appreciation the Commission's efforts to co-operate with other bodies in the task of unifying and harmonizing international trade law and thanked the members of the Commission and its secretariat for their very commendable work which had led to the adoption of the United Nations Convention on the Carriage of Goods by Sea.

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36. Mr. GOMEZ ANZARDO (Cuba) expressed satisfaction with UNCITRAL's report. In his view, the Convention on the Formation of Contracts for the International Sale of Goods and the draft Convention on the International Sale of Goods would be much more viable and more easily discussed as a single integrated text. He attached great importance to the UNCITRAL symposia, which would be very useful to young lawyers from developing countries wanting to specialize in international trade law. He was glad to note that the Working Group on International Negotiable Instruments was nearing the end of its work on international bills of exchange and international promissory notes. Regarding the future work of the Commission, it was regrettable that owing to financial constraints the Commission could only establish three working groups. Its work schedule was so heavy that another working group should be established. He believed that the Commission could do very valuable work on such topics as arbitration and non-discrimination in trade questions. The Working Group on the New International Economic Order would be more useful if the commencement of its work was preceded by a thorough analysis of the issues it was to study, which were very complicated and should not be treated in haste.

37. The CHAIRMAN announced that the list of speakers on agenda item 115 would be closed on 3 October at 1 p.m.

The meeting rose at 12.07 p.m.