UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/CN.9/11/Add.1
10 January 1969
ENGLISH
ORIGINAL: ENGLISH/RUSSIAN/
SPANISH

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW
Second session
Geneva, 3 March 1969
Item 4 (a) of the provisional agenda

REPLIES AND STUDIES BY STATES CONCERNING THE HAGUE CONVENTIONS OF 1964

Note by the Secretary-General

Addendum

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INTRODUCTION

In his note (A/CN.9/11) the Secretary-General reproduced the substantive portions of the replies and studies received as of 5 December 1968 from Governments of States Members of the United Nations or members of the specialized agencies pursuant to his communication of 3 May 1968 concerning The Hague Conventions of 1964 (i.e. the Convention relating to a Uniform Law on the International Sale of Goods and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods). The present addendum reproduces the substantive portions of the additional replies and studies received since the circulation of document A/CN.9/11.

TEXT OF THE REPLIES AND STUDIES BY STATES

AUSTRALIA*

[Original: English]
27 November 1968

Addendum to the reply reproduced in document A/CN.9/11, page 4:

In accordance with the Secretary-General's request, the Government of Australia intends to submit a detailed statement of its position concerning the Conventions, with reasons, when the comments from the interested bodies have been received and considered.

* Member of the Commission.

CZECHOSLOVAKIA*

[Original: English]
27 December 1968

1. Considerable attention has been paid in the Czechoslovak legislation during the past several years to the questions relating to legal regulations governing international trade relations. The special nature of those relations was studied, as well as the legal problems relating to their regulation. In 1963, the Czechoslovak Code of International Trade was issued to regulate the problems in a special manner differing from that applying to internal relations.

2. During the legislative work on the Code, note was taken, inter alia, also of the legal norms contained in the Uniform Laws on International Sale of Goods although only of the draft text dating from 1956. This was due to the fact that the Czechoslovak Code entered into force in 1963 prior to the final conference, that is before the definitive texts of the Uniform Laws were available. Regardless of that, a number of principles contained in the Uniform Law on International Sale of Goods were incorporated in the Czechoslovak Code, although in certain cases, in a somewhat modified form. The Czechoslovak legal system, therefore, enables us to assess, to a certain degree, how successful those principles have been in practice.

3. On the basis of experience to date, it may be considered practicable to start from the principles set out in the Uniform Law in any future unified regulation of international sale of goods. However, it is necessary to examine the practicability of certain modifications of the principles.

4. Doubts arise primarily about the correctness of article 2 of the Uniform Law on International Sale of Goods which basically represents a negation of private international law because, in principle, it excludes the use of conflict norms in the application of that law. However, conflict norms are contained in other articles (for instance, articles 3, 4, 5, 17, 38) making it possible for doubts to arise as to their correctness.

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* Member of the Commission.

5. The principle embodied in article 2 stipulates the absolute application legis fori regardless of the character or the legal situation which is to be the subject of regulation. Although it is necessary to take into consideration the endeavour to emphasize the significance of the unified regulation and to enforce its broadest possible application, it apparently goes too far because it promotes the application of the Uniform Law regardless of the fact whether the law of the signatory State, whose legal system's component it is, is to be in a given case applied at all on the basis of the regulations of private international law. The Uniform Law is, under article 2, applicable even to legal relations concerning exclusively persons coming from States which have not adopted the Law, should their legal position be subject to the decision of a signatory State's court. This manner of enforcing the broadest possible application of the Uniform Law is not suitable for the regulation of international trade relations. The application of the future uniform norms should be therefore limited only to the cases where the law of the signatory State, whose laws the uniform norms will become a component of, will be applicable in accordance with the rules of private international law.

6. That solution is to be regarded as correct which will primarily unify the conflict norms and examine on their basis (in case the form of the Uniform Law is adopted) which law is applicable while using the unified substantive norms only in those cases when it will concern the law of which the unified regulations constitute a component. Depending on the number of States that will adopt the unified rules, conflict problems will, to a certain degree, disappear because certain questions will be handled in the same way regardless of the fact which signatory State's law will be applicable.

7. The incorrectness of the principle embodied in article 2 of the Uniform Laws concerning the exclusion of conflict norms is also apparent when a comparison is made between its contents and the contents of the Convention on the Law Applicable to International Sales Contract of 1955 which it directly contradicts. Under article 2 of the said Convention, which has already entered into force and is obligatory for several States, the contracting parties are free to choose the laws; the legal code of the selling party is applicable in principle. In contrast, the Uniform Laws stipulate the principle of exclusive applicability legis fori.

Not even the principle lex posterior derogat priori offers a solution because the range of contracting States may differ and the negation of conflict norms expressed in article 2 of the Uniform Law is aimed against the States that are not Parti) to the Convention on Uniform Law.

8. Another contradiction may be found between article 3 of the Uniform Law enabling only a partial application of its regulation and thereby the splitting of the statute as well as the silent selection of the law, and article 2 of the Convention on the Law applicable to International Sale of Goods which starts from the opposite premise.

9. If the Commission rightly decided to deal with the unification of the conflict adjustment of international sale of goods, it may hardly adopt the principle that negates the solution of these problems. Therefore, article 2 of the Uniform Law should be replaced by the principle that the unified norms will become a component of the legal codes of Treaty States and will be applicable if, in accordance with the private international law (also unified, if possible) the legal code of any of the Treaty States will be relevant.

10. It will be also necessary to re-examine the definition of the term "international sale of goods". The Uniform Law starts from the adjustment which is too complicated and the application of its rules depends on factors which may cause considerable legal uncertainty.

11. When seeking to define the term "international sale of goods" it is necessary to start from the Commission's terms of reference outlined in the resolution of the United Nations General Assembly of 17 December 1966; it follows therefrom that the Commission's competence is restricted to the law of international commerce. Relations having, on the one hand, international character, but which, on the other hand, may be regarded as commercial, may be included.

12. The Uniform Law when defining the term "international sale of goods" starts from the subjective factor /contracting parties are the parties having their places of business (l'établissement) in the territories of different States/ as well as from objective factors (stated in article 1, paragraph 1, letters (a) to (c)). Only the contracts showing the subjective factor as well as some objective factor, are subject to the Uniform Law.

13. Apart from the aforementioned factors establishing the international character of the sale, there is no definition in the Uniform Law of the expressly commercial character of the sale. Although there is a mention in connexion with the subjective factor of the place of business (which is not stipulated in detail but which apparently presumes enterprising activity of the party), article 1, paragraph 2, makes it possible, in the case of the contracting party not having a place of business, to consider as decisive the place of habitual residence (residence habituelle). It is, of course, thereby admitted that the adjustment may apply, provided all other prerequisites are met, to the cases where doubts may arise as to their inclusion in commercial relations (for instance, the Uniform Law may apply in the case of a tourist purchasing abroad merchandise for his own use to be transported to his country). On the other hand, doubts may arise whether certain purchases of goods should not be subject to the unified adjustment although none of the conditions stated under letters (a) to (c) of article 1 is fulfilled. Thus, for instance, the Uniform Law does not take into consideration the fact that the buyer's obligation, that is the payment of the sales price, is realized on international level, that legal problems, different from internal relations, are connected with it, and that it should therefore provide the grounds for the application of the proposed adjustment.

14. The interpretation of article 1, paragraph 1, of the Uniform Law may also cause certain difficulties. For instance, in connexion with the condition that goods will be internationally transported, doubts may arise at the time of the conclusion of the contract (when it ought to be clear which law will be applicable) whether the said transportation will actually take place, or perhaps, whether all negotiating parties are aware of the fact that the transportation will take place and, consequently, the contract is subject to the Uniform Laws.

15. As for the condition stated under letter (c) of the same paragraph, doubts may arise in determining the law applicable in the consideration of the place of delivery should none be stated in the contract.

16. In view of the above it would be desirable for the Commission to re-examine the definition of the term "international sale of goods" in order to achieve maximum legal certainty.

17. In defining the international character of the sale of goods, one should apparently start from the subjective view (namely, the domiciles of the contracting parties in the territories of different States), while the commercial character should be determined keeping in mind the purpose of the sale (similarly as the French commercial law does in certain cases).

18. In view of the above, it would be possible, for instance, to define the nature of an international sale of goods as a sales contract concluded between parties not having their domiciles (places of business) in the territory of the same country, if, at the time of concluding the contract, they knew or obviously had to know, that the purchased goods were destined for resale or other enterprising activity of the buyer (for instance, for the purpose of equipping the buyer's manufacturing business, etc.).

19. When defining the term "sales contract", it would be desirable to exclude therefrom the cases when the goods are yet to be manufactured and the customer who ordered the goods is to supply, at least in part, components or items to be used in the manufacturing process. Difficulties would probably appear in interpreting article 6 of the Uniform Law in connexion with the interpretation of the term "essential and substantial part of materials" ("une partie essentielle des elements nécessaires"). Apart from that, the stipulation of customer's obligations in connexion with the handing over of those items, and especially violation of those obligations in an essential manner modify the position of the parties (for instance, in assessing the shortcomings of the goods produced). Thus it would be undesirable to subject those cases to the same legal régime as the cases in which the production of the goods is a matter concerning the seller alone.

20. Besides these general questions the Commission will have to re-examine a number of other principles on which the Uniform Laws are based, in particular, for instance, the principle of the non-obligatory nature of a proposal for the conclusion of a contract, etc. When these matters are taken up, the Czechoslovak delegation will be in a position to provide information as to the degree of success of certain principles of the Uniform Laws adopted by the Czechoslovak Code of International Trade or, on the other hand, of the respective deviations therefrom embodied in the Czechoslovak rules.

MALDIVE ISLANDS

[Original: English]
14 December 1968

Due to the lack of experience in the conduct of international trade, the Maldivian Government does not feel competent to express any opinion on the subjects referred to in the above note. Besides, in the opinion of the Maldivian Government, the volume of trade - particularly external trade - does not necessitate the Maldive Islands to a here to most of the international treaties on trade.

MEXICO*

[Original: Spanish]
30 December 1968

I. The two Hague Conventions of 1964

1. The Diplomatic Conference on the Unification of Law governing the International Sale of Goods, which met at The Hague from 2 to 25 April 1964 at the invitation of the Netherlands Government, was attended by representatives of twenty-eight States (twenty-two European, two American and four Asian), and by observers from four Governments (including that of Mexico), five intergovernmental organizations (the Council of Europe, the European Economic Community, the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (UNIDROIT) and the Organization for Economic Co-operation and Development) and from the International Chamber of Commerce. The Conference drew up two Conventions (which should be considered separate and independent of each other), which were opened for signature and ratification on 1 July 1964, in accordance with their provisions, at the Ministry of Foreign Affairs of the Netherlands.

2. Each Contracting State undertook to incorporate into its own legislation, in accordance with its constitutional procedure, the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods. After the Conventions entered into force, the provisions of the Uniform Laws were to be applied to international sales.

3. Conditions and time-limits were laid down for ratification.

4. It was stated that the Conventions would be open to accession by all States Members of the United Nations or any of its specialized agencies, and that they would come into force six months after the date of the deposit of the fifth instrument of ratification or accession, an event which apparently has not yet taken place.

5. In respect of a State that ratified or acceded to the Conventions, it was provided that the Conventions would come into force six months after the date of the deposit of its instrument of ratification or accession with the Ministry of Foreign Affairs of the Netherlands.

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* Member of the Commission.

6. It was provided that any State, when ratifying Convention A, might notify the Government of the Netherlands that it would apply the Uniform Law on the International Sale of Goods only to contracts in which the parties thereto had chosen that Law as the law of the contract. However, it was also provided that the parties to any international contract of sale might choose the Uniform Law, even when their places of business or habitual residences were not in different States (an eventuality covered by the aforementioned Uniform Law on the International Sale of Goods) and irrespective of whether the States concerned were Parties to the Convention.

7. It was further provided that any Contracting State might denounce the Conventions by notifying the Government of the Netherlands to that effect, and that after they had been in force for three years, any Contracting State might request the convening of a conference for the purpose of revising a Convention or its Annexes.

II. The establishment by the United Nations of the United Nations Commission on International Trade Law, and the first session of the Commission (29 January - 26 February 1968)

[This section has been omitted]

III. The Convention relating to a Uniform Law on the International Sale of Goods (A) and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (B)

1. Development

The Convention relating to a Uniform Law on the International Sale of Goods (A) represents the culmination of a series of studies, discussions, conferences and agreements covering a period of about forty years, begun by the International Law Institute in 1926, and continued from 1928 onwards by the Hague Conference on Private International Law under the auspices of the Government of the Netherlands, and from 1930 onwards by UNIDROIT, which prepared the first version of a draft uniform law on the international sale of goods. That draft, together with comments from Governments obtained by the Institute through the League of Nations, served as the model for the preparation of the so-called second version of the draft in 1939 by a small Commission composed of Professors Bagge, Hamel and Rabel.

After the Second World War, the draft was resubmitted to the Hague Conference on Private International Law, which had been convened by the Government of the Netherlands in 1950 to consider a draft convention on the law applicable to international sales of goods (C).

The Hague Conference approved the 1939 UNIDROIT draft as a basis for future work and appointed a Special Commission composed of eminent jurists from Belgium (Fredericq), Denmark (Ussing), Federal Republic of Germany (Rabel and Riese), France (Hamel), Italy (Pilotti and Angeloni), the Netherlands (Meijers), Spain (de Castro and Bravo), Sweden (Bagge), Switzerland (Gutzwiller), and the United Kingdom (Wortley), which revised the draft and in 1956 prepared a new one, which was duly transmitted to the Government of the Netherlands. The latter was requested to submit it to Governments for examination and comments, in accordance with the resolution adopted by the Seventh Conference at its first plenary session.

The final draft of the convention relating to a uniform law on the formation of contracts for the international sale of goods (B) dates from 1934, when UNIDROIT began to study the unification of rules governing the formation of contracts. A draft uniform law on the formation of international contracts concluded by correspondence was submitted to UNIDROIT in 1936. It was considered that there was little chance of producing an international convention based on that draft, which the Institute consequently set aside until 1951. From that year onwards, both the Hague Conference on Private International Law and UNIDROIT continued the work, and a new draft uniform law was submitted to and approved by the Seventh Hague Conference on Private International Law, which also approved the draft uniform law on international sales of goods.

In the following years, comments were received from Governments on both draft uniform laws. Consequently, the second session of the Diplomatic Conference on the Unification of Law Governing the International Sale of Goods was convened and a new Commission appointed. The Commission accepted some of the suggestions made by Governments and finally submitted both texts for consideration by the Diplomatic Conference which met at The Hague from 25 April to 1 July 1964.[1/]

1/ Translator's note. The dates appear to be wrong. The Conference was held from 2 April to 25 April 1964.

2. Additional background information

The two Conventions (A and B) reflect the continuous labours of well-known jurists from countries with different legal traditions, such as the United Kingdom and the United States on the one hand and the countries of continental Europe on the other. In preparing the Conventions, valuable and important precedents relating to the unification of laws concerning sales were taken into account, such as the Scandinavian laws on sales, the United Kingdom Sale of Goods Act and the United States Uniform Commercial Code. Representatives of the countries of continental Europe and of the United Kingdom and the United States took part in the drafting of the final texts.

Furthermore, the subject of international sales has been carefully and thoroughly studied, not only by UNIDROIT, but also by the International Association of Legal Science (IALS), which has promoted regulation in this field through international meetings and colloquia (Rome, 1958; Helsinki, 1960; London, 1962; and New York, 1964) and analysed the two 1964 Hague Conventions at the last-mentioned meeting in New York. These meetings were attended not only by UNIDROIT and the Hague Conference on Private International Law, but also by the International Chamber of Commerce and the American Law Institute and by representatives and experts from Western Europe (Belgium, France, Italy, Netherlands, Sweden and the United Kingdom), the countries with centrally-planned economies (Czechoslovakia, Hungary, Poland, Romania, USSR and Yugoslavia), Asia (Japan) and America (Mexico and the United States).

3. Sphere of application of the two 1964 Conventions

(a) First of all, the two Conventions govern only sales of corporeal moveables (goods), and do not therefore apply to immovables or incorporeal or immaterial items, such as intellectual property rights (copyrights) and industrial property rights (patents, trademarks, trade names). The rule that immovables are governed by the law of the place in which they are situated (lex sitae) is retained. Incorporeal and immaterial items goods are fully protected by other bodies (BIRPI) and other texts of wide international scope (Union Convention of Paris for the Protection of Industrial Property).

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Furthermore, some corporeal moveables are expressly excluded from both Uniform Laws, since it was considered that by their nature they require special national or international treatment. These goods are specified in articles 5 (1) and 1 (6) of the Uniform Laws annexed to Conventions A and B respectively, namely: (i) stocks, shares, investment securities, negotiable instruments or money; (ii) ships, vessels or aircraft which are or will be subject to registration; (iii) electricity and (iv) sales by authority of law or on execution or distress. Originally (1939 Rome draft) it had also been stated that the laws would not apply to live animals, but this restriction was withdrawn in the 1956 draft.

The goods mentioned in paragraphs (i) and (ii) above have for the most part been subjected to international regulation through the 1930 Geneva Convention providing a Uniform Law for Bills of Exchange and Promissory Notes, the 1930 Geneva Convention providing a Uniform Law for Cheques, the 1924 Brussels International Convention for the Unification of Certain Rules relating to Bills of Lading, no less than twelve conventions prepared under the auspices of the International Maritime Committee, the 1929 Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air, etc.

Electricity was excluded from the Uniform Laws - independently of the discussions relating to its nature as a corporeal good - mainly because it was considered that, generally speaking, it did not constitute an object of private sales and was not covered by the rules governing the obligations of the seller and the buyer arising from a contract of sale. Sales by authority of law or on execution or distress were excluded because they are not contracts proper but transactions resulting from judicial proceedings in which the will of the seller is replaced by that of the judge, so that they must be recognized as falling within the exclusive purview of municipal law.

(b) Secondly, the Conventions relate to <u>international</u> sales, and not to contracts of sale of a national character, which are subject to municipal law, except where the parties to the contract agree that the Uniform Law on the International Sale of Goods shall apply (article 4). Professor Tunc, in his <u>Commentary</u> on the Hague Conventions (which the United Nations sent to the Mexican Government with the

text of the Conventions, pursuant to an UNCITRAL decision) states that the definition of international sale gave rise to long discussions at the Hague Conference, despite the fact that it had been considered at the UNIDROIT meetings at Rome (1952), Nice (1953) and Lugano (1956), at which the subjective criterion (nationality of the parties), the objective criterion (domicile or residence) and the mixed criterion were discussed. "The concept of nationality, which prior to the First World War seemed to dominate most international relations, gave way to the concept of domicile, which has in turn been replaced by other concepts such as those of residence and place of business" (Gutzwiller).

Both Uniform laws lay down the general rule (article 1) that "the present Law shall apply to contracts... entered into by parties whose places of business are in the territories of different States", and that "where a party to the contract does not have a place of business, reference shall be made to his habitual residence". Furthermore, it is expressly stated that the application of the Law "shall not depend on the nationality of the parties".

(c) Thirdly, the two 1964 Hague texts govern both civil and commercial international sales, a distinction which is unknown in the countries whose law is of the English tradition and has been superseded in other countries whose law is of the Roman tradition (Switzerland, Italy), but which prevails in all the legal systems based on the Napoleonic Code. International sales of a civil character will clearly be very rare in comparison with international commercial sales (irrespective of the criteria used by the various legal systems to determine whether the sale is of a commercial nature), but there was no valid reason for excluding them.

In federal States such as Mexico (and, from another point of view, the United States) the civil or commercial character of the transaction determines whether it is governed by local or federal legislation. However, this does not affect the federal Government's competence to conclude international treaties or conventions relating to matters governed by laws falling within the purview of the States members of the federation. It must be recognized that, in Mexico at least, the Federal Government does possess that power, and that international treaties and conventions, together with the Constitution of the Republic, constitute "the supreme law of the whole Union" (article 133 of the Constitution).

(d) The text of the Uniform Law on the International Sale of Goods (A) governs "only the obligations of the seller and the buyer arising from a contract of sale", and expressly excludes, unless otherwise provided by the parties, both the formation of the contract [governed by the other 1964 Hague Convention relating to a Uniform Law (B), which, as stated above, is quite distinct from the Uniform Law on the International Sale of Goods (A)], and the property in the goods sold and the validity of the contract or of any of its provisions (article 8).

Consequently, the scope of this Uniform Law "on the International Sale of Goods" is much narrower than might be implied from its title.

In fact, it governs only the obligations of the seller [basically, delivery of the goods (articles 20-32), conformity of the goods with the contract (articles 33-49), handing over of documents (articles 50 and 51), transfer of property (articles 52 and 53)], the obligations of the buyer (payment of the price (articles 57-64) and taking delivery of the goods (articles 65-68)), and the effects deriving from those obligations, namely, the avoidance of the contract (articles 75-81), matters pertaining to damages (articles 82-95) and the passing of the risk to the buyer (articles 96-101).

This limitation of the Uniform Law, agreed upon and accepted from the time of the first UNIDROIT drafts, was introduced because it was felt that other rules relating to the legal regulation of contracts of sale were not suitable for international regulation, or were at least of secondary importance in that respect. The important subjects for a uniform law designed to govern and protect international trade were precisely the basic obligations of the seller and the buyer, and the most frequent effects deriving from the sale, such as rescission, non-fulfilment and the passing of the risks.

(e) It was also agreed that it would be inadvisable for Uniform Law (A) to govern the transfer of the property in the goods to the buyer, in view of the differences of practice as regards dealing with this problem in municipal legislations. As Tunc says, for some the mere conclusion of the contract results in the passing of property (e.g., Mexico), whilst for others the contract only gives rise to obligations and property is not transferred until the goods are handed over (Spain, Argentina).

Following well-known modern precedents, such as the Scandinavian laws, the Swiss Code of Obligations, and the United States Uniform Commercial Code, the Uniform Law is not concerned with the effects which the conclusion of a contract may have on the property in the thing sold. The Uniform Law does not concern itself with property, which was rightly considered to be secondary and even superfluous (as Lagergren says, it is important only for succession and fiscal purposes). However, the Uniform Law does deal - in article 18 - with the transfer of the property in the goods as an obligation of the seller (and not as an effect, far less an implication of the sale). The Uniform Law makes the seller responsible to the buyer for freeing the goods from all rights and claims of third persons (articles 52 and 53) and governs other consequences or effects of the contract (e.g. warranties, conformity of the goods and passing of the risk) which are extraneous to and independent of the question of property, to which they are not necessarily linked.

(f) Furthermore, the Uniform Law does not lay down rules relating to the capacity of the parties or the form of the contract. These matters are reserved for municipal legislations and questions relating to them are not governed by the 1955 Hague Convention on the Law Applicable to International Sales of Goods, from which they are expressly excluded (article 5).

4. Optional character of the two Conventions

Neither of the two Conventions (A and B) is binding on the parties to international contracts of sale, even when ratified by the States to which the parties belong. Article 3 of the Uniform Law on the International Sale of Goods (A) provides that the parties may exclude the application of the Law either entirely or partially, adding that such exclusion may be express or implied. Similarly, article 2 of the Uniform Law on the Formation of Contracts for the International Sale of Goods (B) allows the parties to avoid application of the Law whenever they establish that other provisions apply.

The facultative or optional character of the Uniform Laws, marking the consecration and triumph of the traditional jus privatum principle of autonomy of will, was already a feature of the Rome drafts (of 1939 and 1952), whose most eminent advocate was the noted German jurist Ernst Rabel, and is reflected in other provisions of the two Uniform Laws (A and B). It has rightly been criticized

"for obvious reasons of justice and equity, which require a mandatory law to be upheld where obligations are involved",[1] and is not recognized in another important international body of laws concerning sales - the CMEA General Conditions of the Delivery of Goods - which apply to the socialist countries of Europe with centrally planned economies and are mandatory (jus cogens), unless a derogation from them is rendered necessary by the specific nature of the goods or the characteristics of their delivery.

Application of the Uniform Law on the International Sale of Goods (A) would thus be excluded entirely or partially if the parties so decide, expressly or implicitly, and subject themselves to other laws, municipal or foreign. As stated above, the 1939 draft already embodied this principle but it required the parties expressly to renounce the application of the Uniform Law and also to specify the municipal law which would be applied. Thus the non-mandatory nature of the Uniform Laws was established, with the possible result that the will of the stronger party to the contract may prevail.

5. Application of commercial usages and practices

The two Uniform Laws specify that the parties to contracts of sale shall be bound by any usages to which they have referred expressly or implicitly (Uniform Law A, article 9) or which exist with regard to the formation of contracts (Uniform Law B, article 2) and by any practices which they have established (ibidem, articles 9 and 2). This is an acknowledgement of the continuing value and importance of commercial custom as a source of commercial law, from the outset and during its development, and of the great influence in this connexion of prevailing commercial practices - standard contracts, forms of contract and commercial terms. The Laws therefore recognize and accept the application to these transactions of customary clauses taken, for example, from the General Conditions of Sale and Standard Forms of Contract, formulated by the Economic Commission for

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1/ Federico de Castro y Bravo, who further states: "Industrial and financial groups are trying, like the ancient feudal authorities, to use the device of the freedom of contract in order to perpetuate, extend and justify their sphere of influence but the concept of democracy and the natural sense of justice have produced a strong legislative and doctrinal reaction, which has in practice imposed a limitation on the autonomy of will".

Europe; trade terms such as "c.i.f., "f.o.b." and "f.a.s.", defined by the International Chamber of Commerce (ICC); and, lastly, sales transactions involving banking services, which are governed by the ICC Uniform Customs and Practice for Documentary Credits.

So-called interpretative usages are also accepted ("usages which reasonable persons in the same situation as the parties usually consider to be applicable to their contract", to quote Uniform Law A, article 9, paragraph 2) and are even considered to prevail over the Law, unless otherwise agreed by the parties.

This subordination of the Uniform Law to normative and interpretative usages and practices constitutes an additional limitation[2/] and may result in the imposition of unfair usages or inequitable practices, for example, practices based on limited responsibility clauses, in the waiver by the buyer of certain warranties, or in the establishment of very short time-limits for the submission of claims, which in standard contracts are usually laid down by the economically stronger party (generally the importer) to the detriment and prejudice of the weaker party. To complicate matters further, Uniform Law A expressly states, in article 8 in fine, that it is not concerned with any disputes which may arise concerning the validity of any usage.

6. Other basic concepts in the Uniform Law on the International Sale of Goods (A)

(a) Delivery. Ever since its genesis in the Rome drafts of 1935 and 1939, the drafters of Uniform Law A have been mainly concerned with defining the obligation of the seller to deliver the goods sold, with establishing effective rules to govern that obligation and with the effects of its due fulfilment.

As in the case of property, efforts were made to avoid raising purely theoretical and doctrinal questions and controversies. On the contrary, as Lagergren and Tunc point out, a purely contractual concept was formulated, based solely on acts and real situations.

Use was made of the experience of the Scandinavian countries (Denmark, Sweden, Norway and Iceland), which have laws on sales and court decisions on the subject to the effect that delivery is the act whereby the seller performs the duty, incumbent on him under the contract, of enabling the buyer to take actual

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2/ Mr. Bagge, the Swedish representative, said with reference to a similar formula in the 1956 draft that the Uniform Law would be applied only if the Contracting Parties failed to reach agreement on other rules.

possession of the goods. In other words, the question of delivery is dealt with as a factual situation, separately from the questions of property and possession with which it is conventionally linked.

In the 1939 Rome draft, delivery included all the acts which the seller was obliged to perform for the goods to be handed over (remise) to the buyer; this did not always involve tradition - the changing of hands - and could be simply the offer of the goods.

Uniform Law A adopts the same approach and, in what may be an over-simplification, merely states in article 19 that delivery consists in the "handing over ("remise" in the original French text) of goods which conform with the contract". This text respects the precedents of the Rome draft, uses the terminology of the 1951 Hague draft, and resorts to a vague term ("handing over") instead of the original wording, which was clearer.

In any event, the idea is to avoid questions of tradition and possession; these are dealt with differently in municipal law which, in Mexico for instance, provides for actual, symbolic and virtual delivery. As stated in Swedish judicial decisions, the important point is that the seller should fulfil his contractual obligations, so that the goods are available to the buyer, whether or not the latter actually possesses them. This is the way in which "delivery of the goods" is interpreted in chapter III, section I (articles 19 to 32) of the Uniform Law, concerning the delivery of goods in sales involving carriage, the obligations regarding the date and place of delivery and the remedies for non-performance.

(b) Conformity of the goods sold with the contract

The goods delivered must, however, "conform with the contract". Conformity of the goods is therefore an element of the delivery.

The text of the Uniform Law is clear and precise on this point, as were its Rome and Hague predecessors. The aim was basically to distinguish between sales of definite and specific goods (species) and sales of unascertained goods (genus in obligatione deductum) and to show how specification of the goods could take place.

Angeloni says that the 1951 Hague draft of the Uniform Law, which in this respect is the same as the text under consideration, again departs from

traditional distinctions between "goods different from those contracted for, goods lacking the qualities promised or those essential for the use for which they are intended, and goods suffering from faults or defects rendering them unsuitable for the use for which they are intended... all these possibilities are covered by the single concept of lack of conformity with the contract". Article 33 of the Uniform Law provides that the seller has not fulfilled his obligation to deliver the goods where he has handed over: (i) part only of the goods sold or a larger or a smaller quantity of the goods than he contracted to sell; (ii) goods which are not those to which the contract relates or goods of a different kind; (iii) goods which lack the qualities of the sample or mode; (iv) goods which do not possess the qualities necessary for their ordinary or commercial use or the qualities for some particular purpose contemplated by the contract and (v) in general, goods which do not possess the qualities and the characteristics contemplated.

The buyer who feels that his rights have not been respected has only a warranty against the cases of lack of conformity of the goods enumerated in article 33 and no other warranty against real or alleged lack of conformity (which Tunc says might include warranty against defects in the goods or nullity based on mistake as to the substance of the goods).

(c) Passing of the risk

Another basic concept of the Uniform Law on the International Sale of Goods is the passing of the risk to the buyer who, in accordance with article 96, shall "pay the price notwithstanding the loss or deterioration of the goods, unless this is due to the act of the seller or of some other person for whose conduct the seller is responsible".

The passing of the risk takes place even if the loss or deterioration is due to force majeure. In the Uniform Law it is separate from the conclusion of the contract and the passing of property (res perit domino) and relates solely to the delivery of the goods in the conditions contemplated in the contract and in the Uniform Law - an approach similar to that adopted in German and Scandinavian Law. In addition, it is admitted that the passing of the risk is governed by the cardinal principle of the Uniform Law - the autonomy of the parties' will, which means that they may establish different rules from those laid down in the Uniform Law.

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In short, despite certain omissions in this instrument, which have been noted by famous and authoritative commentators (Tunc, Schmitthoff), the provisions concerning the passing of the risk suit the purpose. They not only indicate clearly and in simple terms the effects which it produces (the buyer pays the price) and provide for different possibilities (goods in transit); sales of unascertained goods; cases of non-performance or lack of conformity of the goods). They also make the passing of the risk a consequence not of the passing of property, as in the French system, or of the conclusion of the contract, as in the Swiss Obligationenrecht, which always created serious problems of interpretation, but of the delivery of the goods (handing over of goods which conform with the contract and the Law). In addition, they allow the parties to arrange for the risk to be assumed in a manner other than that provided for in the Uniform Law.

7. Principal features of the Uniform Law on the Formation of Contracts for the International Sale of Goods (B)

Municipal laws disagree on the question at which moment contracts between absent persons are executed. As is well known, there are four theories or solutions: information, reception, declaration and dispatch.

The 1964 Hague Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods differs from the 1958 Rome draft on the formation of such contracts, which stated in article 12 that the contract was deemed to be executed when the acceptance was communicated to the offeror, and has no provision to this effect. It does, however, establish that the offer shall not bind the offeror until it has been communicated to the offeree (article 5) and that it may be revoked only if the revocation is communicated to the offeree before he has dispatched his acceptance (article 5, paragraphs 1 and 4). It states that acceptance consists of a declaration communicated by any means whatsoever to the offeror (article 6) and that the expression "to be communicated" means to be delivered at the address of the person to whom the communication is directed (article 12). This is thus a disguised version of the idea of reception. The offer may be revoked at any time before acceptance has been communicated; acceptance consists of a declaration communicated by any means; and communication requires

delivery at the address of the offeror. This is because in the Hague draft the contract was deemed to be executed from the moment of such delivery or reception - in other words, the meeting of minds occurs at the moment when the offer is received and the contract therefore exists legally from that moment.

It would have been preferable for that theory, or any other, to have been stated openly and clearly in this Uniform Law, in order to avoid conflicts and doubts regarding its interpretation.*

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* Chapter IV of the study, which relates to the Hague Convention of 1955 on the Law Applicable to International Sale of Goods is reproduced in document A/CN.9/12/Add.1.

ROMANIA*

[Original: English]
16 December 1968

The adherence of Romania to the three conventions mentioned in the letters is under consideration by the Romanian competent authorities.

* Member of the Commission.

SPAIN*

[Original: Spanish]
3 November 1968

I. Freedom of contract

One of the most important problems arising in connexion with this Convention is the way in which the freedom of contract of the parties is defined.

It may be worth noting that according to the Spanish interpretation the freedom of contract of the parties is generally understood to be twofold in nature; it comprises (a) the right of individuals to enter into or not to enter into a specific contract, and, (b) once they have decided to enter into a contract, the right of the parties to lay down such stipulations and conditions as they deem appropriate, provided they are not unlawful, immoral or contrary to public policy.

Given this interpretation of the freedom of contract, it is clear that the Convention involves only the second aspect, namely, the right of the parties to include in an international contract of sale stipulations, clauses and conditions establishing rights and obligations different from those laid down in the Uniform Law.

This point is dealt with in article V of the Convention and article 3 of the Uniform Law.

Under article V of the Convention, States may, at the time of ratification or accession, declare that they will apply the Uniform Law only to contracts in which the parties thereto have expressly chosen that Law as the law of the contract. This means, therefore, that when a State exercises the right in question it will be assumed, except where the parties expressly state otherwise, that it was not desired to apply the Uniform Law, and the application of that Law will consequently be excluded, there being no need for the parties to the contract to make any declaration to that effect. In this case, therefore, the parties will enjoy the same freedom of contract as they would have if the Uniform Law did not exist.

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* Member of the Commission.

When a Contracting State has not made the reservation provided for in article V of the Convention, the parties may exclude the application of the Uniform Law either entirely or partially. Such exclusion may be express or implied, as provided in article 3 of the Uniform Law itself.

These provisions laid down in the Convention are unacceptable; we therefore propose that they should be amended in the manner, and on the grounds, indicated below.

Firstly, article V of the Convention should be deleted. It is pertinent to point out that this article was not included in the draft submitted to the international Conference at The Hague.

This proposal is made on the following grounds:

(A) Exercise by any State of the right conferred in this article would unduly complicate the application of the Convention, thereby reducing significantly the advantages which might be gained from its entry into force.

(B) The ground mentioned above is so compelling that, when the article was adopted, a number of delegations stated that it would be desirable for the right granted therein to be exercised only by the United Kingdom. However, it is obviously unreasonable to impair the potential effectiveness of a multilateral Convention by including in it specific privileges benefiting only one State - quite apart, of course, from the fact that such a situation is contrary to the principles governing the formulation of treaties of this kind.

(C) The right accorded in article V extends even further the principle of freedom of contract recognized in article 3 of the Uniform Law. Article 3 allows the parties to a contract undue latitude, as will be shown below, and this fault becomes even more serious if this provision is read in conjunction with article V of the Convention.

(D) Exercise of the reservation referred to in article V could seriously affect attempts to solve problems arising in connexion with the international sale of goods.

It should be borne in mind, firstly, that application of the reservation could be detrimental to nationals of other countries who entered into a contract without knowing of the existence of such a reservation benefiting nationals of the country which had made it.

Secondly, where a country exercises this reservation, it appears possible that there may be divergences in the settlement of disputes related to the application of the Convention and involving nationals of other countries which have not made this reservation, according to which country the court considering the case is situated in.

With regard to article 3 of the Uniform Law, we propose that it should be replaced by article 6 of the 1963 draft, which was prepared by the Special Commission appointed for the purpose and the text of which was as follows:

> "Article 6. The parties may entirely exclude the application of the present law provided that they indicate the municipal law to be applied to their contract.
>
> "The parties may derogate in part from the provisions of the present law provided that they agree on alternative provisions, either by setting them out or by stating to what specific rules other than those of the present law they intend to refer.
>
> "The references, declarations or indications provided in the preceding paragraphs are to be subject of an express term or to clearly follow from the provisions of the contract."

The grounds for this proposal are the following:

(1) The essential difference between the final text of article 3 of the Uniform Law and that of article 6 of the 1963 draft is not that they regulate the freedom of contract of the parties in different ways, since freedom of contract as a general principle is expressly recognized in both texts.

(2) The real difference between the two versions of the provision lies in the extent to which they guarantee the parties to a contract certainty of knowledge of their rights and obligations under the contract.

Under article 3 of the Uniform Law, it is possible for the parties to have entirely or partially excluded the application of the Uniform Law itself without indicating what provisions are to govern the contractual relationship in lieu of the legal terms. This means, therefore, that the principle of freedom of contract may be used in such a way that the parties do not know what their position is under the contract.

The text of draft article 6, on the other hand, accorded the parties the same freedom, provided that they made it sufficiently clear what provisions were applicable to the contract.

(3) Thus, according to both these texts, the parties enjoy the same freedom in forming the contract, but whereas under article 3 of the Uniform Law that freedom can be used to make the position of the parties more uncertain, under the text of draft article 6 there can be no such uncertainty.

(4) This is a consequence of particular importance if one bears in mind that it is the stronger party who benefits from the fact that the obligations and rights under the contract are not clearly defined.

This is so because his economic strength makes him better able to bring legal proceedings than the other party, who will lack the counsel and means needed to contest the suit successfully.

Moreover, it should not be forgotten that the stronger party will have drafted the contract - often as a contract of adhesion - and will have included in it a clause giving jurisdiction in respect of disputes arising out of the interpretation of the contract to those courts which he regards as being more favourable to him.

In these circumstances, it seems clear that the weaker party benefits from knowing precisely what his position is as a result of the contract. It ought therefore to be unacceptable that freedom of contract should be used, not to replace the provisions contained in the Uniform Law by others, but merely to cause legal uncertainty to the parties to a contract.

(5) Finally, with regard to the freedom of contract accorded in article 3 of the Uniform Law, it should be pointed out that some system must be devised for determining easily which municipal law shall be concerned with the validity of the contract or its provisions since under article 8 of the Uniform Law it is that law which will determine the limitations upon the freedom of contract laid down in article 3. In this connexion, it is important that States which have ratified the Convention relating to a Uniform Law on the International Sale of Goods should also become parties to the 1955 Hague Convention on the Law Applicable to International Sales of Goods, since the latter complements the Convention on the Uniform Law in this respect.

II. Obligation of the seller to deliver the goods

Another of the most important questions arising from the provisions of the Uniform Law is how to define the obligation to deliver the goods, which rests upon the seller. It should be borne in mind that this obligation, the performance of which entails immediate payment of the price, can be considered the most important obligation under the contract and, consequently, the one which requires most careful regulation.

The first fundamental problem which arises is whether it is proper to regard delivery (délivrance) of the goods as an obligation of the seller.

Delivery is of course traditionally regarded as the principal obligation resting upon the seller.

In accordance with this traditional interpretation, which is characteristic of the civil codes of the nineteenth century, delivery is understood to mean the transfer of possession of the goods from the seller to the buyer. Article 1604 of the French Civil Code and article 1462 of the Spanish Civil Code, for example, are clear on this point.

In short, delivery in its true sense means the transfer of possession of the goods.

However, it is clear that the transfer of possession is not dependent solely upon the will of the seller; in order for the transfer to take place, the co-operation of the buyer is essential. Delivery therefore presupposes a bilateral act, which consists of the seller's supplying the goods and the buyer's accepting them.

In other words, the seller, by his action alone, can in no circumstances effect delivery unless he has the co-operation of the buyer.

Viewed in this light, it appears obvious that delivery can in no circumstances be regarded as an exclusive obligation of the seller. The latter can be required to carry out only those actions the performance of which is dependent upon him alone - in other words, to supply the goods to the buyer in the way provided for in the contract.

It must be stated, therefore, that the inclusion of delivery among the obligations of the seller is unacceptable, and it should consequently be excluded from the Uniform Law.

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We therefore propose the following amendments to the text of the Uniform Law:

(1) In article 18, replace the word "delivery" (délivrance) by the words "supply of goods which conform with the contract".

(2) Delete, as being unnecessary, paragraph 1 of article 19.

(3) Throughout the Uniform Law, replace the word "delivery" (délivrance) by the word "supply".

These amendments would not only define the obligations of the seller in a more conclusive manner, better suited to the needs of commerce, but would also bring the substance of articles 18 and 19 of the Uniform Law more into line with the rest of the Uniform Law itself, as we shall endeavour to demonstrate below:

(A) It should be borne in mind that article 56 places upon the buyer the obligation to "take delivery of /the goods/" ("prendre livraison de la chose") and that article 65 defines "taking delivery" (prise de livraison) in the following terms:

> "Taking delivery consists in the buyer's doing all such acts as are necessary in order to enable the seller to hand over the goods and actually taking them over."

This means that, if the Uniform Law is amended in the manner proposed, its structure would be greatly enhanced: the seller would have the obligation to supply the goods to the buyer, and the latter would have the obligation to accept them. As a result of this joint action - by both seller and buyer - delivery would be effected as transfer of possession.

(B) Article 98, paragraph 3, relating to passing of the risk, clearly states that the risk shall pass when the seller has done "all acts necessary to enable the buyer to take delivery (prendre livraison)". In other words, the passing of the risk is effected by "supply".

(C) The way in which the Uniform Law regulates sales involving carriage of the goods also shows clearly that delivery as transfer of possession to the buyer is not an obligation of the seller, but that he performs his obligation to supply the goods to the buyer by delivering them to the carrier.

Article 19, paragraph 2, states that, where the sale involves carriage, delivery shall be effected by handing over the goods to the carrier for transmission to the buyer.

It is clear, however, that this handing over to the carrier does not bring about delivery as transfer of possession to the buyer, firstly, because the carrier does not accept the goods on behalf of the buyer and, secondly, because when the goods have already been dispatched the seller is granted the right, in certain circumstances to prevent the delivery of the goods to the buyer (art. 73, para. 2).

Finally, it must be stressed that one of the amendments proposed is the deletion of article 19, paragraph 1, which would clearly be beneficial to the structure of the Universal Law, since this provision, in attempting to define "delivery" (délivrance)is really tautological, with the result that it defines nothing.

It is our opinion that the terms "délivrance" and "remise" have the same meaning in French and are synonyms, although we realize that it is not for us to make such an assertion. What is beyond doubt is that this problem of synonyms will be aggravated when the French text is translated into other languages, such as Spanish, in which it would be necessary to define the main obligation of the seller, in accordance with article 19, paragraph 1, by saying that delivery ("délivrance") consists in the delivery ("remise") of goods which conform with the contract. The tautology, or vicious circle will then be obvious.

UNION OF SOVIET SOCIALIST REPUBLICS*

[Original: Russian]
27 December 1968

These Conventions were adopted at the 1964 Hague Conference in which only twenty-eight States participated. These included only three socialist and two developing States.

The Conventions were ratified by only one State (the United Kingdom) and did not enter into force. Now, according to the provisions of the Conventions themselves, they cannot enter into force.

The Conventions obviously suffered this fate because they do not meet the requirements which the overwhelming majority of States demand from international instruments of this kind.

In the opinion of the competent Soviet organs, these Conventions are not suitable material for the work of the United Nations Commission on International Trade Law.

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* Member of the Commission.

UNITED STATES*

[Original: English]
7 January 1969

1. Importance of Unification of Sales Law

This response to the Secretary-General's enquiry should be placed in the setting of the basic support by the United States for the unification of law governing international sales. Participation in the work of the International Institute for the Unification of Private Law (and of the Hague Conference on Private Law) was made possible by a joint resolution enacted by the United States Congress and approved by the President of the United States on 30 December 1963. Thereupon, the United States sent a delegation of six representatives to the Diplomatic Conference on the Unification of Law Governing the International Sale of Goods which was convened at The Hague in April, 1964.

In advance of the Diplomatic Conference of April 1964, the United States prepared and transmitted for use at the Conference a statement of general views with respect to unification of sales law and also specific suggestions for improving the pending drafts. This statement opened as follows:1/

> The importance of unifying the basic rules of law relevant to international trade is becoming increasingly evident. The legal problems which arise in international trade are, in fact, akin to those which have led the States of the United States in the course of past half-century to develop and widely adopt a large number of uniform laws including the Uniform Commercial Code.
>
> The United States welcomes this related development on the international scene, and hopes that the forthcoming work on the draft Uniform Law for International Sales will make it suitable for widespread approval.

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* Member of the Commission.

1/ Diplomatic Conference on the Unification of Law Governing the International Sale of Goods - The Hague, 2-25 April 1964, Vol. 2, p. 235 (hereafter referred to as RECORDS OF CONFERENCE).

2. Adequacy of the Proposed Uniform Laws to Promote Unification

This statement by the United States also made a number of specific suggestions for improving the proposed Uniform Law on the International Sale of Goods (herein called Sales Law; the companion draft will be termed the Formation Law). The statement pointed out that at crucial points the proposed Sales Law employed artificial concepts (délivrance; résolution) of academic or regional legal significance. The statement noted that these artificial concepts would be difficult to apply with clarity and uniformity and suggested that the draft be modified to speak of the practical results that flow from commercial events that are familiar to the merchants of the world - the transfer of risk on shipment of the goods; payment of the price in exchange for control over the goods. The statement by the United States also pointed to provisions governing the time within which a buyer must give notice that the goods are defective; the statement noted that these provisions failed to follow commercial practice and were so complex and artificial that they would be difficult to apply and could lead to technical barriers to just claims. Other specific suggestions were designed to improve the proposed Sales Law at points at which the draft failed to speak clearly in terms of commercial practice or commercial need. (See RECORDS OF CONFERENCE, Vol. 2, pp. 241, 243-244, 262, 264, 268, 277, 279-280, 289-290, 302-303, 306, 331, 342, 344-345).

At the Conference the United States delegation worked toward the goal of making the drafts acceptable for international adoption. Some progress was made, but the length and complexity of the Sales Law (which ran to 101 articles) made it impossible within the time available at the Diplomatic Conference materially to improve the basic outlook or structure of the Law. Indeed, the necessity to make numerous minor amendments as the result of suggestions made on behalf of a large number of States produced new drafting and technical problems which could not be adequately solved in the hectic closing days of the Conference. (The above-described difficulties were less acute with respect to the proposed Formation Law because of its relative brevity (13 articles) and simplicity. It seems necessary, however, to give principal attention to the problems presented by the Sales Law, since it would be impractical to give approval of the proposed Formation Law independently of the closely-related and much more substantial proposed Sales Law.)

Toward the close of the Diplomatic Conference, on 2 April 1964, the Chairman of the United States delegation spoke to the Plenary Session of the hopes of the delegation that the above-described problems might be solved so that the proposed Law might "serve as a solid and reliable first step in the unification of the law of international sales transactions". (See RECORDS OF CONFERENCE, Vol. 1, p. 309). He continued:

> The Sales Law has been very much improved in the course of the Conference, and this is a matter for congratulation. But unfortunately, in our opinion there are several serious weaknesses which still remain. Among these are:
>
> (1) the draft points more to external trade between common boundary nations geographically near to each other;
>
> (2) insufficient attention has been given to international trade problems involving overseas shipments;
>
> (3) reciprocal rights and obligations as between seller and buyer viewed in light of the practical realities of trade practices, are not well balanced;
>
> (4) the law will not be understood by individuals in the commercial field.

The representatives of many other States, who had worked hard to improve the law but had found that it was impractical in the available time to cope with these difficulties, reached the end of the Conference with the feeling that the job was unfinished. Reflecting this feeling, the following Recommendation II (2) was add d as an annex to the Final Act of the Diplomatic Conference:

> (2) The Conference recommends, in the event the Convention relating to a Uniform Law on the International Sale of Goods has not come into force by 1 May, 1968, that the International Institute for the Unification of Private Law establish a committee composed of representatives of Governments of the interested States, which shall consider what further actions should be taken to promote the unification of law on the international sale of goods.

Since the Convention did not come into effect by the specified date, and since certain provisions such as that barring recourse to the rules of private international law have been subjects of considerable controversy and may be deterring States from becoming parties to the Convention, this procedure provided by the Conference should play a central part in the next steps toward effective unification. (See Part 5, infra.)

3. Recommendations with Respect to the Conventions Relating to the Proposed Sales Law and Formation Law

Because of the above-described deficiencies in the proposed uniform laws, the United States does not believe that they are as yet acceptable for international use. Therefore, the United States does not recommend that the Conventions relating to these laws should come into force at the present time and will not itself become a party thereto.

Unifying the basic law governing the international sale of goods is a step of great scope and importance. The quality of the law that is offered for international adoption should be commensurate with the importance of the project.

A step of this magnitude calls for careful work prior to ratification, since a convention that has been put into effect by several nations is difficult to revise. And improvements from time to time are impossible where, as here, difficulties lie at the heart of the law's structure and approach.

For the desired unification to be effective rather than illusory, a uniform law must speak to and solve the real problems of international trade. Abstract concepts drawn principally from the legal terminology of only one region, such as are found in the proposed laws, are likely to be construed differently in different parts of the world; this result ill serves the basic objective to minimize misunderstanding and litigation.

4. Recommendations for Carrying Forward the Goal of Unification

Further work on the proposed drafts is needed. Fortunately, this work need not halt or even delay progress toward effective unification. The work that was done in preparation for and in the course of the Diplomatic Conference of April 1964, and the establishment of UNCITRAL have developed a momentum toward unification that should carry this work on to successful completion. The thoughtful documents proposing improvements in these laws that were presented at the Diplomatic Conference - improvements most of which could not be realized because of the complexity of the proposed Sales Law and shortage of time - are now available in the excellent records of the Conference and can be used in revising the proposed laws. As noted above, the Final Act of the Conference envisaged a mechanism for moving forward.

In view of the Rome Institute's expertise in this area of the law, UNCITRAL wisely decided at its first session to request the Secretary-General to make the replies to the Secretariat's enquiries on the conventions available to the Institute for study. We understand that the Institute will convene a committee of experts to review the replies to the sales questionnaire. This committee can be expected to make concrete recommendations for the appropriate next steps to promote the unification of law for the international sale of goods. We would anticipate that this committee will use the momentum and expertise that have emerged from years of study so as to recommend methods of revising the current drafts and making them generally acceptable. The timing with respect to this further work should take into account the opportunities for the development of concrete information with respect to commercial trade practice that can be gained through the development of standard contracts - a project to which we now turn.

5. Development of Standard Contracts and Conditions of Sale

The Government of the United States recommends the vigorous implementation of the recommendation that emerged from the first session of UNCITRAL for the development of standard contracts and conditions of sale suitable for international trade. (See United Nations General Assembly document A/CN.9, 4 March 1968, Part II at paragraphs 19-21). This work can have a double utility: (a) to provide a vehicle of immediate practical application for international trade and (b) to provide a wider background and a more realistic foundation for the eventual revision of the above uniform laws. The drafting of such model contracts and conditions of sale under international auspices can ensure that the interests of both buyers and sellers are fully represented and thus avoid one-sided or overreaching provisions that reflect a dominant economic interest. This opportunity was recognized by representatives from various parts of the world in the September, 1964 Colloquium sponsored by the International Association of Legal Science. See UNIFICATION OF THE LAW GOVERNING INTERNATIONAL SALES OF GOODS (Honnold, ed., 1965), 240-241 (statement by Professor Barrera-Graf of Mexico) and 263-264 (statement by Professor Michida of Japan); 416 (general conclusions of the Colloquium summarized by the General Reporter).

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The development of standard contracts and general conditions of sale must be based upon full information regarding the rules, customs and practices employed not only in the various parts of the world but also in the many fields of international trade. In collecting, analysing and collating these data it will be necessary to make full use of the experience of all organizations and bodies in the world that have been concerned in this field. An important and immediate task for UNCITRAL is the determination and adoption of methods by which all the necessary activities can be organized and co-ordinated.

6. Conclusions

(1) The United States will not become a party to the Convention Relating to a Uniform Law on the International Sale of Goods of 1964 or the Convention Relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods of 1964.

(2) The United States considers that weaknesses in the 1964 Conventions can be eliminated by further study and work.

(3) The United States suggests that an important step toward the establishing of a world-wide law for international sales transactions in the development of standard contracts and conditions of sale and that the United Nations Commission on International Trade Law should concern itself with how accomplishment of this task should be organized and co-ordinated.
