

manufactured goods. The distinguished delegates are aware of the fact that in the history of developed States, they have always imposed prices on whatever goods that were imported from developing countries and then they exported the finished goods on a very much higher price. There is no doubt that the difference is very high between the low price of the raw materials and the high price of the manufactured goods. This subject of high prices of manufactured materials and low-prices of raw materials has been discussed in the UNCTAD in New Delhi in 1968. I do not want to go into its details. But we want this Committee to take note of that fact because it is of great importance to all of us.

International oil cartels are imposing low prices on the oil produced in our areas and they also impose rules and regulations on international sale of oil. So, this industry will continue as an exclusive trade for them. Any of the developing countries which wants to enter the oil market will not find it very easy to do so because of the restrictions imposed by the oil cartels.

Anyway, in Iraq we are trying our best to intervene in international oil markets, but we are facing many difficulties. I think the same thing is happening in the case of other minerals as well as materials such as cotton and other things. We are suffering from the monopoly of the developed countries on the international trade.

International Sale of Goods had been discussed at the last session of the Committee which took place at Accra and I would like to thank the Chairman of the Sub-Committee and his Rapporteur for the report which was presented to us. Also, I would like to thank the Secretary-General of the Committee for the detailed brief which has been offered to us. Concerning the answer of my Government to the letters which were sent by the Secretary-General of this Committee on the 14th of October, we have referred this matter to the authorities concerned in Iraq and we hope that they will go

into the subject in detail and will inform the Secretariat about their reply.

My delegation has no objection to the adoption of a standard or model contract in respect of some commodities which may be of special interest to buyers and sellers of the Asian-African region, subject to the condition that this model would be revised or modified to suit the needs of the parties concerned. I would like to mention here that nowadays Iraqi trade is government controlled. Most of the imports are undertaken by the Government. One example is the purchase of tea from Ceylon which is done by a government agent. These contracts, as they were before, are not private contracts any more. It is a kind of administrative contract. We cannot say that these contracts are absolutely private contracts because the government is participating in international trade.

We would like to note that the International Sale of Goods is of prime importance and involves so many difficulties of a technical nature. So, we suggest that this subject be studied and discussed seriously and in detail in the Sub-Committee. I would like also to mention that we consider this subject to be a technical subject which concerns the trade in the area, namely, Asia and Africa. So, Asia and Africa should participate in the discussions in putting their views forward. Although it is a legal subject, it has a commercial aspect also.

PRESIDENT :

May I have the attention of delegates to the Brief of Documents, Volume 3. The Standing Sub-Committee on this subject consists of representatives from 7 countries, namely, Ceylon, Ghana, India, Japan, Nigeria, Pakistan and the U.A.R. Any other country that wishes to come into this Standing Sub-Committee should indicate it now. [Iraq was co-opted on the Standing Sub-Committee].

EIGHTH MEETING HELD ON
27TH JANUARY 1971 AT 11 A. M.

Hon. T.S. Fernando (President)

IN THE CHAIR

PRESIDENT :

Distinguished Delegates are aware that this Sub-Committee that met on a number of days had from yesterday the benefit of the assistance of Professor Honnold, Chief of the International Trade Law Branch of the Office of Legal Affairs, UNCITRAL. He arrived here in Colombo on the day before yesterday and was able to participate in the discussions of the Sub-Committee from yesterday meeting. As he is present here with us today, I am sure all members of the Committee and all delegations to this Assembly, would like to hear Professor Honnold if he wishes to make any statement of a general nature at this stage. May I now call upon Professor Honnold to speak ?

UNCITRAL :

(Professor John Honnold)

Mr. President. It is indeed an honour to meet again this important body and to share in its work. The process of collaboration between this Committee and the Secretariat of the United Nations Commission on International Trade Law started very constructively last year in Ghana. I am glad that this collaboration is moving forward this year. Of course, I am deeply sorry that I could not get here to take part in the opening discussions in the plenary on Monday. This had to be a three-meeting trip and accidents of air schedules from Ghana to Ceylon delayed me by a day. Certainly, this delay, as the Sub-Committee knows, does not

indicate a lack of interest in this work.

I understand that the subject of unification of international trade law—that is the work of the new United Nations Commission—UNCITRAL—was introduced fully and well at the plenary on Monday. As you know, the General Assembly of the United Nations in its Resolution setting up this Commission guarantees the full and fair representation of all regions in its membership and members from Asia and Africa have taken an active and constructive role in its work. Thus, on Monday you were able to hear about it from active participants in the work of the Commission, such as Dr. Jagota, who have made an invaluable contribution to the work of the Committee.

The Sub-Committee, under the Chairmanship of Mr. Pirzada met both yesterday morning and yesterday afternoon. As you may have noted from examining the report of the Sub-Committee which you have just approved, the Sub-Committee has laid out concrete and practical plans for collaboration. Between this Committee and the on-going work of the Secretariat of the UNCITRAL, the goal of this collaboration is a vital one which is to ensure that the facts about commercial practice in this great region and the needs and interests of this region will be fully taken into account in the work of UNCITRAL. For instance, I wish to commend to your special attention, in the report which you have just approved, the work that the Secretariat of this Committee has already done and will now carry forward, to learn whether the existing model contracts take account of the commodities that are important to your regions, and whether they are fair to the commerce of the regions. A concrete plan, mentioned in the report, is the assistance your Secretariat will provide in gathering the existing contracts in use and in analysing their provisions. This progress was made possible, in large part, because of the exceedingly thorough investigations and advance planning by the two lawyers in the Ceylon Delegation,

Miss Wickremasinghe and Mr. Basnayake who laid the necessary basis for the work of the Committee.

Your Committee also did, in my opinion, useful work on the other matters currently before the United Nations Commission that is, the review of the Uniform Law on International Sale of Goods; the preparation of a Uniform Law on Prescription in the field of Sale of Goods; the work, proceeding very rapidly and well, towards Uniform Rules to solve the divergencies existing with respect to bills of exchange and cheques used in international settlements; the work of special importance to this region on international shipping legislation; review of the rules on the responsibility of ocean carriers for loss or damage to cargo; and finally, the work to facilitate the use of arbitration in international commercial disputes.

In closing, let me say how highly the United Nations Commission on International Trade Law and its Secretariat regard this opportunity for collaboration. We trust this collaboration will continue. Thank you.

PRESIDENT:

Are there any distinguished Delegates who wish to make a statement or any other comment on the Law of International Sale of Goods? (*Pause*)

I will assume that no Delegate wishes to speak further on the subject. Before I pass on from this subject, may I, on behalf of you all, thank Professor Honnold for coming here taking great trouble to himself which is only a recognition of the importance that UNCITRAL attaches to our work, and it is certainly a satisfaction for all of us to learn that this United Nations Commission is quite ready to assist our work in any way that we desire. Thank you, Professor Honnold, on behalf of all of us.

REPORT OF THE SUB-COMMITTEE APPOINTED AT THE TWELFTH SESSION

Chairman :	Mr. S.S. Pirzada (Pakistan)
Rapporteur :	Dr. S.P. Jagota (India)
Joint Rapporteur :	Mr. S.S. Basnayake (Ceylon).

The Committee having discussed the Law relating to the International Sale of Goods in plenary session, referred the subject for further consideration to a Sub-Committee, whose composition it was decided should be the same as that appointed at the Accra Session, with the addition of Iraq. The Sub-Committee met on the 26th of January 1971. Those present were representatives of Pakistan, India, Ghana, United Arab Republic, Japan, Nigeria, Ceylon and Iraq, and the Secretary of the Committee, Mr. B. Sen.

Mr. M. Matteucci, Secretary-General of the Institute for the Unification of Private Law, and Mr. J. Honnold, the Secretary of the United Nations Commission for International Trade Law, were present as observers.

Mr. Pirzada, the Delegate of Pakistan, presided.

It will be remembered that Dr. Jagota was appointed rapporteur of the Sub-Committee at the Accra Session. At this meeting Mr. S.S. Basnayake of Ceylon was appointed joint rapporteur. The Chairman first welcomed those present, and then invited Mr. J. Honnold to make a statement on the topic of model contracts.

1. Model Contracts

Mr. Honnold said that this topic had been discussed at two sessions of UNCITRAL. The first step taken had been to circulate to Governments the model contracts drafted for the European region by ECE and to ask for their comments.

Subjects covered by these contracts were plants and machinery, durable goods, sawn softwood, citrus fruit, and wheat. There had not been a very great response, mainly because these contracts were primarily of interest not to governments but to commercial circles. Thereafter, under the auspices of ECA, certain of these contracts, such as those relating to plant and machinery, and timber, had been sent to governments in Africa, and there now appeared to be sufficient support to justify the holding of a conference to discuss model contracts for these items in relation to Africa.

Some discussion then took place as to the procedure to be followed in discussing the topic and the Chairman then formulated the following questions for consideration by the Sub-Committee :—

- (1) Is the Sub-Committee in favour of working on the topic of model contracts ?
- (2) If so, in respect of what commodities should the subject be discussed, and what agencies should be approached in this connection ?
- (3) Should there only be comment on existing contracts, or should new contracts be drafted after consulting the interests concerned ?
- (4) Should the Committee recommend the convening of a Conference after the necessary preparation and in co-ordination with U.N. Agencies ?

In regard to the first question, it was the view that work should proceed on the topic of model contracts, meaning by that term not contracts of adhesion, but standard contracts with general terms which could be modified by the parties.

In regard to the second question, the following commodities were suitable as a starting point for such model contracts :—Rubber, Timber, Rice, Textiles, Machinery, Oil,

and Coconut Products, and it was further agreed that the member Governments and their Chambers be approached to indicate other commodities.

In regard to the third question, it was decided that work could proceed both in commenting on existing contracts, and drafting new ones where necessary. It was agreed that preparatory work should be undertaken before convening a conference. It was decided, that the Secretariat should endeavour to collect all the model contracts in use in regard to the topics under consideration, and Mr. Honnold agreed to supply copies of all ECE contracts already drafted. The next step would be an analysis and comment on these contracts pointing out their common features and any particular problems they presented. This was to be prepared by the Secretariat. Thereafter this analysis and comment would be circulated to Governments, commercial agencies and other interested parties for their comment. A meeting of the inter-sessional Sub-Committee may be held during the year to consider the material and the comments and to make recommendations for the Committee. Thereafter, it was agreed that if a conference was to be convened it would be a meeting of legal and commercial experts in the field of study under the chairmanship of an official of an international organization, and with the co-operation of UNCITRAL, ECA, ECAFE and such other organizations as might be considered necessary.

2. Articles 1 to 17 of ULIS

Thereafter the Sub-Committee considered the second topic for consideration, namely, the suitability of Articles 1-17 of the Hague Convention of 1964 relating to a Uniform Law of International Sales. Mr. Honnold was invited to give an account of the work done by the Working Group of UNCITRAL at its last session in December on these 17 articles. Mr. Honnold said that certain changes of a basic nature had been suggested by the Working Group. In the first place, all

sales which are commonly called consumer sales had been removed from the operation of the Uniform Law by amending Article 5. This was to give consumers the protection of regulatory laws of the national systems which had been enacted for the protection of consumers. Secondly, Articles 1 and 2 which deal with the general sphere of application of the Uniform Law had been changed. Under the new draft, the element which delimited the international character of a sale was the fact that the places of business of the parties to the contract were in different contracting States. The applicability of the law was also widened by applying the Uniform Law where the rules of Private International Law led to the application of the law of a contracting State.

On this aspect, the comment was made that while the previous pattern of the Uniform Law had been to presume wide acceptance of the Uniform Law but to permit reservations to limit its application the new pattern was to start with a narrow application as between the contracting States and to widen the scope through the application of the rules of Private International Law, as well as the choice of the parties, and even by a suggested new declaration by a State that it would apply the Uniform Law to all international sales coming before its courts.

The question was also discussed as to whether as amended the definition of an international sale would catch up what were in reality domestic sales.

3. Prescription

Mr. Honnold was thereupon invited to make a statement on the draft law on prescription in relation to the International Sale of Goods prepared by UNCITRAL. He stated that the draft law was an attempt to meet various problems in this field, and in particular two problems. Firstly, there was extreme divergence as to the length of the period of prescription. Secondly, some systems of law regarded their rules of prescription as rules of procedure, and applied them

to all cases coming before them. Others regarded them as rules of substantive law. Further, the effect of prescription on obligation was drastic. For these reasons he attached great importance to the project. The text would be considered at the next session, but would not be finalised till 1972.

He also stated that the proposal was to finalise the text on prescription independently of that on International Sale of Goods, save that the definition of what constituted an International Sale of Goods would be the same in both texts. The Secretariat had now prepared a commentary explaining the provisions of the text, which would soon be officially published. It was agreed that the text should be studied in connection with the commentary, and that the Secretariat should obtain and circulate the commentary. It was also agreed that this question should be further considered at the inter-sessional meeting of the Sub-Committee.

4. Negotiable Instruments

The Chairman then requested Mr. Honnold to make a statement on the work done by UNCITRAL in relation to negotiable instruments. Mr. Honnold said that under the auspices of UNCITRAL there had been assembled a body of international experts from such institutions as the I. M. F., the World Bank, the I.C.C., UNIDROIT, and U. S. Federal Reserve System to consider the formulation of a uniform law to govern cheques and bills of exchange used in making international payments. A questionnaire had been prepared and circulated and a large number of replies had been received from interested institutions. These had now been analysed by the Secretariat, and a working paper was being prepared suggesting lines for further work. Particular attention was being paid to the two topics of forged endorsements, and the formalities attending protest and notice upon non-payment where there are basic divergencies between different legal systems.

It was agreed that the Secretariat of the Committee

should obtain from the Secretariat of UNCITRAL the responses sent from governments and institutions of the Afro-Asian region. These should then be analysed and circulated among members for further study. This subject also could then be considered at the inter-sessional meeting.

5. International Shipping Legislation

The Chairman then suggested the topic of International Shipping Legislation for discussion. Mr. Honnold said that collaboration was under way among international organisations on various projects, including the responsibility of the carrier in various fields. With respect to the responsibility of carriers for the cargo, UNCITRAL was co-operating with UNCTAD which was investigating the economic factors which had a bearing on the carriers' responsibility. It was also observed that some of the existing shipping laws had been drafted in the first quarter of this century by bodies only representing shipowners, and was unfairly weighted in favour of the shipowners in the context of today. It was agreed that this was a sphere of great interest to developing countries, and that the Committee should study the questions involved.

6. International Arbitration

The Chairman then suggested that the topic of International Arbitration should be discussed. A number of problems that were experienced by members in this field was mentioned. Among them was the problem that States or State controlled institutions were entering the field of commerce, and that there was room for the plea of sovereign immunity to be raised as a bar to arbitration or to the enforcement of the award through a decree of the court. Again, it had to be decided whether the award was only to contain the bare decision, or to give reasons for the decision, and in either case to decide on the possible grounds for attacking the award. Sometimes arbitration in a foreign country was specified in a contract, and this proved to be a practical

impossibility because foreign exchange would not be released to a party to bear the expenses of conducting such arbitration.

Mr. Honnold gave a short account of the work of UNCITRAL in this sphere, and said that Prof. Nestor of Rumania had been appointed a Special Rapporteur for the subject, who is expected to submit his report by the end of 1971.

It was suggested that it might be possible to draft a model set of arbitration rules, which parties to a contract would be free to adopt.

It was agreed that the Secretariat should first ascertain what research had been carried out in our own region in this field. Thereafter a questionnaire could be drafted to collect the views of the members on the problems involved.

Prof. Honnold supplied members of the Sub-Committee certain documents relating to the work of UNCITRAL.

ANNEXURE

TEXT OF ARTICLES 1-17 OF ULIS INCLUDING MODIFICATIONS RECOM- MENDED BY THE WORKING GROUP

Article 1

1. The present Law shall apply to contracts of sale of goods entered into by parties whose places of business are in different States :

- (a) when the States are both Contracting States ; or
- (b) when the rules of private international law lead to the application of the law of a Contracting State.

2. The present Law shall also apply where it has been chosen as the law of the contract by the parties.

Article 2

For the purpose of the present Law :

- (a) The parties shall be considered not to have their places of business in different States if, at the time of the conclusion of the contract, one of the parties neither knew nor had reason to know that the place of business of the other party was in a different State ;
- (b) where a party has places of business in more than one State, his place of business shall be his principal place of business unless another place of business has a closer relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at the time of the conclusion of the contract.

- (c) where a party does not have a place of business, reference shall be made to his habitual residence ;
- (d) neither the nationality of the parties nor the civil or commercial character of the parties or the contract shall be taken into consideration ;
- (e) a Contracting State means a State which is party to the Convention dated.....relating to.....and has adopted the present Law without any reservation (declaration) that would preclude its application to the contract ;
- (f) any two or more States shall not be considered to be "different States" if a valid declaration to that effect made under Article (2) of the Convention dated.....relating to.....is in force in respect of them.

Article 3

The parties may exclude the application of the present law or derogate from or vary the effect of any of its provisions.

Article 4

(Deleted)

Article 5

- 1. The present Law shall not apply to sales ;
 - (a) of goods of a kind and in a quantity ordinarily bought by an individual for personal, family, household or similar use, unless the seller knew that the goods were bought for a different use ;
 - (b) by auction ;
 - (c) on execution or otherwise by authority of law.
- 2. Neither shall the present Law apply to sales :
 - (a) of stocks, shares, investment securities, negotiable instruments or money ;

- (b) of any ship, vessel or aircraft (which is registered or is required to be registered);
- (c) of electricity.

Article 6

1. The present Law shall not apply to contracts where the obligations of the parties are substantially other than the delivery of and payment for goods.

2. Contracts for the supply of goods to be manufactured or produced shall be considered to be sales within the meaning of the present Law, unless the party who orders the goods undertakes to supply an essential and substantial part of the materials necessary for such manufacture or production.

Article 7

(Deleted)

Article 8

(Deleted)

Article 9

1. The parties shall be bound by any usage which they have expressly or impliedly made applicable to their contract and by practice which they have established between themselves.

2. The usages which the parties shall be considered as having impliedly made applicable to their contract shall include any usage of which the parties are aware and which in international trade is widely known to, and regularly observed by parties to contracts of the type involved, or any usage of which the parties should be aware because it is widely known in international trade and which is regularly observed by parties to contracts of the type involved.

3. In the event of conflict with the present law, such usages shall prevail unless otherwise agreed by the parties.

4. Where expressions, provisions or forms of contract commonly used in commercial practice are employed, they shall be interpreted according to the meaning widely accepted and regularly given to them in the trade concerned unless otherwise agreed by the parties.

Article 10

(For the purposes of the present Law, a breach of contract shall be regarded as fundamental wherever the party in breach knew, or ought to have known, at the time of the conclusion of the contract, that a reasonable person in the same situation as the other party would not have entered into the contract if he had foreseen the breach and its effects.)

Article 11

Where under the present law an act is required to be performed "promptly", it shall be performed within as short a period as is practicable in the circumstances.

Article 12

(Deleted)

Article 13

(Deleted)

Article 14

(Unchanged)

Article 15

(A contract of sale need not be evidenced by writing and shall not be subject to any other requirements as to form. In particular, it may be proved by means of witnesses.)

Article 16

(Unchanged)

Article 17

In interpreting and applying the provisions of this Law, regard shall be had to its international character and to the need to promote uniformity in its interpretation and application.

THE HAGUE CONVENTION ON THE UNIFORM LAW ON INTERNATIONAL SALE OF GOODS, 1964.

Note prepared by the Secretariat of the Committee

1. Introduction
2. Historical Background
3. Ratification of or Accession to the Hague Conventions of 1964
4. Consideration by the UNCITRAL
5. The Hague Convention on the Uniform Law on International Sale of Goods, 1964 (ULIS) :
 - (i) Incorporation into National Municipal Legislation
 - (ii) Application with reservations :
 - (a) Article II.
 - (b) Article III.
 - (c) Article IV.
 - (d) Article V.
 - (iii) Application to 'International Sale of Goods'
 - (iv) Application as Chosen Law
 - (v) Application subject to mandatory provisions
 - (vi) Application with exclusion of Conflict Rules
 - (vii) Exclusion of ULIS by contract
 - (viii) Commercial usages and practices
 - (ix) Terms used in the ULIS
 - (x) Form of Contract
 - (xi) Delivery
 - (xii) Performance
 - (xiii) Conformity of goods
 - (xiv) Inspection