concentrate on this area, while not neglecting the other topics appertaining to international trade. For this purpose, it was decided that a practical step would be to draft a model contract which would be applicable to many of the commodities indicated as being of interest to the region. This could be circulated in advance, and comment and criticism invited.

Apart from the technical problems arising out of drafting, there are some major issues of policy which require consideration when a model contract is drafted. One of the objectives in the use of model contracts is that they try to provide within their four corners the answers to questions that may arise between the parties, so that businessmen in particular need not go beyond the contract document. How far is this objective possible or desirable ? Most model contracts now in use are framed against an assumed background of the rules of a particular system of national law (e.g. as to the type of remedies available on breach of contract) and sometimes this system is expressly selected to govern the contract. Indeed, from the seller's standpoint this has been one of the causes of complaint from the sellers of this region, because always the buyer's system of law, together, possibly, with its system of conflict of laws is chosen. Whether it is possible to exclude reference to a national system of law is a matter which requires consideration. On the one hand, it is not possible in the interest of certainty to include in the contract all the general rules of the law of contract which might be applicable, because this would mean including a short codification of the entire law of contract. This draft excludes the operation of any particular system of law. The draft takes the exclusion of a national system of law very far by stipulating that arbitration is to be the only method of settling claims, laying down that the arbitrators should decide in accordance with commercial practice and justice, and not rules of law. Whether this scheme is acceptable is a matter for

consideration.

Again, while the wider adoption of the same or similar model contracts leads to the unification of the law of international trade, the method of unification by drafting a uniform law of sales is also proceeding, and the two methods must progress without disharmony. It is, therefore, necessary that the basic ideas about contract underlying the ULIS and those underlying the model contract must not clash. Also it would be desirable to adopt the phraseology of ULIS in the model contract wherever possible. However, ULIS is still in the stage of comment and redrafting by UNCITRAL and complete harmonization must await the completion of this work. The report of the working group of UNCITRAL on time-limits and limitation (Document A/CN.9/50) has been considered in drafting the terms of limitation.

A third general problem arises with regard to the basic concepts in regard to contract which have necessarily to be inserted into the model contract. Most of the member countries in the region have inherited a legacy of English law in the sphere of sales law, but it is felt that an increasing number of member countries might have a legal system based on French law. The method of accommodating all systems of law (adopted for instance in the E.C.E. contracts) is not to include a concept having a significance only in one legal system (e.g. frustration) but to extract the idea underlying the concept and state it in non-technical language so that it can be understood by lawyers or businessmen versed in any system. Whether the draft presents difficulties in this respect also requires discussion.

The draft model contract

It had been expressly decided at the Colombo Session that the work of the Committee should not be on contracts of adhesion. This later type of contract is normally described as a contract with terms fixed by one party which

(except in very minor details) cannot be varied by the other, who has to 'take it or leave it'. Because of his weak bargaining power, the other party may take it and it will often contain terms favourable to the party imposing it. A model contract differs from the above in that, firstly, the terms of the contract suggested by one party are open to negotiation by the other. Also, generally, the terms are fair as between the two parties. However, there may be contracts on the borderline, where certain terms are open to negotiation and other terms are not. Both these types of contracts, however, are contained in a document which has the format of a contract, and which can be dated and signed by the parties. They both deal very comprehensively with most of the rights and liabilities of the parties. General terms and conditions of contract are regarded as distinct from both these types in that they do not have the format of a contract, but certain model terms and conditions which can be adopted by the parties in a contract. But the distinction is one of degree and not of kind, because by adopting most or all of the model terms and conditions the parties can turn it into a contract. Another use of the model terms and conditions is to focus the attention of the parties to important legal issues in regard to which provision has to be made, so that some term is contained in regard to that issue even though the terms of the general conditions are not acceptable to the parties. In the light of these considerations, what has been drafted is a contract somewhat akin to a set of general terms and conditions. This approach enables the draft to be more flexible and apply to a greater range of commodities.

In drafting the model terms, use has been made of the general conditions of sale and standard contracts which were the subject of study by UNCITRAL (Document A/CN.9/R.6), some of the ECE general conditions of sale and certain other model contracts used by the trade in Ceylon and drafted by overseas buyers. It was decided to draft terms suitable for a F.O.B. and F.A.S. contract.

The F.O.B. contract is already very commonly used. It was thought that the F.A.S. contract also had certain advantages to the seller having regard to circumstances which sometimes arose. It was sometimes very difficult to obtain a clean shipping document from the ships's master for presentation against the letter of credit because of minor damage caused to the goods during loading. The responsibility for the loading lies often in the hands of a third party, like a port authority, and sometimes with the ship. The F.A.S. contract obviates this difficulty for the seller.

The commodities suggested in the responses from member countries showed that these countries were interested in the model contract in the capacity of sellers. However, a contract drafted with excessive weightage in favour of the seller would not be acceptable to the buyers. It was, therefore, only sought to remove clauses in current model contracts which conferred an undue advantage on the buyer.

In regard to the choice of topics on which to draft model terms, the analysis made by UNCITRAL (Document A/CN.9/54) was adopted as a guide. This analysis isolated the important issues common to all the model contracts and general terms dealt with. The conclusion of this analysis was that a general term sufficiently phrased so as to cover a wide range of commodities could be drafted for each of these issues. In regard to particular types of contract (e.g. F.O.B., F.A.S., C.I.F.) this analysis suggested that a definition of each of these terms could be prefixed to the same set of general terms. This method, while possible, has not been adopted in the draft because some of the standard obligations of an F.O.B. or F.A.S. contract (e.g. as to delivery) are more conveniently placed, not in isolation, but together with other terms dealing with the same topic.

The suggested draft is not a complete set of terms and conditions, but only covers what are considered the most important terms and conditions which must be inserted in

any contract. Notes are appended to each set of articles to indicate the reasons for the text and facilitate comment.

It is now recognized that there is no single 'true' form of F.O.B. contract. In the course of its history the obligations of the parties have changed in accordance with their expressed intention, which in turn was the result of different trading conditions existing at different times. What follows is an attempt to provide model terms for what are universally recognised to be central obligations of either party to an F.O.B. contract, and to provide expressly for marginal responsibilities the incidence of which would otherwise be a matter of uncertainty. However, no attempt is made to deal with the variant where the seller assumes responsibility for procuring the freight and marine insurance. Further, it need hardly be said that the F.O.B. term is not taken as a price term alone, but as a term of delivery.

S. S. BASNAYAKE
JOINT RAPPORTEUR

DRAFT STANDARD FORM OF CONTRACT FOR SALE OF CONSUMER GOODS ON F.O.B./F.A.S. BASIS

(PREPARED BY
Mr. S. S. Basnayake, Joint Rapporteur)

Contract No.——

THIS CONTRACT made the——day of——197—between——(hereinafter called the Buyer) of the one part, and——(hereinafter called the Seller) of the other part.

The Buyer agrees to purchase from the Seller, and the Seller agrees to sell to the Buyer,——(describe goods generally) more fully hereinafter described, F.O.B./F.A.S.——(name of port of shipment) on the terms and conditions set out hereunder.

PACKING

1. The goods shall be packed as follows :
   (here insert detailed packing instructions)

   OR

   (where no directions are given as required above)
2. The seller shall deliver the goods in packing that is reasonably sufficient to prevent damage to or deterioration of the goods during transit assuming that the packages are properly handled.
3. A detailed packing list of the contents of the package shall be enclosed in each package.
4. The following markings shall clearly be made with indelible ink on each package :

(a) Contract number ;

(b) Package number ;

(c) Consignee ;

(d) Gross weight ;

(e) The dimensions of each package ;

(f) (if necessary) The following specially warning mark :—

(**Note** : While an obligation on the seller to ensure that the packing is sufficient to prevent damage to the goods during transit is fair, it is a moot question whether an obligation to provide packing sufficient to prevent deterioration is not too stringent on the seller. Deterioration might occur in a number of unforeseeable ways, including natural process. This obligation to protect against deterioration is inspired by clause 4.1(b) of the "General Conditions of sale for the import and export of durable consumer goods and of other engineering stock articles" prepared under the auspices of the ECE (U.N. Publication 61.11. E/Mim.12). Clauses 3 and 4 are taken from General Conditions of Delivery CMEA 1968 Chapter VI).

TAXES, CUSTOMS, DUTIES AND CHARGES

1. The seller shall bear the cost of all taxes, fees or charges levied by the seller's country because of the exportation of the goods, as well as the costs of any formalities which he has to fulfil in order to load the goods on board.

2. The buyer shall bear the cost—

(a) of all taxes, fees or charges levied because of the importation of the goods into any country, as well as the costs of any formalities he has to fulfil in order to unload the goods ; and

(b) of all taxes, fees or charges levied while the goods are in transit.

3. The seller shall not be entitled to increase the price, or the buyer to claim a deduction from the price or refund of part of the price by reason of any change in the aforesaid taxes, fees or charges occurring after the conclusion of this contract.

(**Note** : The rules here stated are drafted on a balance of convenience. Rule 1 is taken from Incoterms 1953, and Rule 2 is a corollary thereof. The idea behind these rules is also found in Section 73 of the CMEA General Conditions. There is judicial authority based on the traditional division of obligations in an F.O.B. or F.A.S. contract that, since the duty of the seller as regards the transit of the goods stops short at delivering the goods on board or alongside the vessel, the exporter of the goods is the buyer, and that therefore all duties incidental to the export should fall on him. However, it is the seller who will generally be aware of the existence and extent of such duties, and it is therefore more convenient to place the liability on him. The seller will naturally compensate himself by including the cost of such duties in the price. The last clause is inserted *ex abundanti cautela* because of some doubt on the point. See *British Shipping Laws* Vol. 5 p. 334).

QUALITY, QUANTITY AND INSPECTION

1. The quality of the goods at the time of delivery on board/alongside the vessel shall be as follows :

   (Insert a detailed description of the quality as agreed upon by the parties)

   OR

   (Where the parties omit to insert a description).

2. The goods at the time of delivery on board/alongside the vessel shall be of average quality, and, where the purpose for which the goods are required by the buyer has been notified to the seller by the buyer, shall be suitable for such purpose.

3. The quantity of the goods at the time of delivery on board/alongside the vessel shall be as follows :

   (about) (Insert a description of the quantity as accurately as possible).

4. The seller shall give the buyer at least———— days notice of the availability of the goods for inspection of quality and/or quantity so as to enable the buyer or his agent, if he so chooses, to inspect the same at the port of shipment. The notice shall specify the place and the period during which inspection can be made.

5. Within———days of the receipt of the notice mentioned in 4 above, the buyer shall inform the seller whether or not he intends to inspect the goods.

6. When the buyer chooses to inspect the goods, samples shall be drawn jointly by the buyer and seller for the purposes of such inspection. Failing such agreement they shall be drawn by an independent surveyor appointed for such purpose.

7. When after inspection, the buyer or his agent does not within———days reject the goods as not

conforming to the requirement as to quality and/or quantity, he shall thereafter be precluded from making any claim against the seller on the ground that the goods do not conform to such requirements.

OR

8. The parties shall by agreement submit the goods for inspection as to quality and/or quantity by an independent surveyor chosen by agreement of the parties. When after inspection such independent surveyor accepts that the goods conform to the requirements as to quality and/or quantity, the buyer shall thereafter be precluded from making any claim against the seller on the grounds that the goods do not conform to such requirements.

9. All costs of such inspection shall be borne equally by the seller and buyer.

10. Even when the buyer chooses not to inspect, it shall be open to the seller to have an inspection made for quality and/or quantity by a surveyor of his choice.

(**Note** : The best course would be to make inspection by an independent surveyor compulsory, whose decision as to quantity and/or quality would be binding on the parties. But this course may not always be practicable, because an independent surveyor acceptable to both parties may not be available at the port of shipment.

The next best course would be to make inspection by the buyer compulsory, since a decision by the buyer at the port of shipment as to quantity and/or quality will greatly lessen the chances of future disagreement. Even this

course is not made compulsory, because in some instances the buyer will be unable to find a suitable agent to inspect at the port of shipment.

Although the draft does not make inspection compulsory, the fact that a reasonable opportunity has been given for inspection will under the general law cut down the power of the buyer to later reject the goods.

In almost all cases, the parties will insert a detailed description as to quality. Clause 2 provides for the case where they do not. Various adjectives have been used in this connection to describe quality ('fair average', 'fair and marketable', 'standard and prime'). A single adjective is preferable as it lessens the possible area of disagreement.

When the word 'about' is used to describe a margin of tolerance in regard to quantity, this should be defined.

SHIPMENT

1. The seller shall have the goods ready for delivery not later than the————.
2. The seller shall notify the buyer immediately the goods are ready for delivery.
3. Such notification shall contain the following information :
   (a) The number of packages ;
   (b) The weight of each package, and the total weight of all the packages ;
   (c) The dimensions of each package ;
   (d) The nature of the packaging ; and
   (e) The markings on the packages.

4. Upon receipt of such notification, the buyer shall within————days inform the seller of
   (a) The name of the vessel on board which/alongside which delivery is to be made ;
   (b) The expected date of arrival of the vessel at the port of shipment. This expected date of arrival must not be less than————days from the date this information is received by the seller ;
   (c) The dates during which the goods have to be delivered on board/alongside the vessel.
5. It shall be open to the buyer at any time before the above-mentioned expected date of arrival of the nominated vessel to nominate a different vessel to which/alongside which delivery is to be made, provided that the expected date of arrival of such different vessel is not later than the expected date of arrival of the earlier nominated vessel.

(**Note** : These clauses contain inter-related obligations of buyer and seller. Clause 4 contains the standard obligation under a F.O.B. contract that the buyer must nominate an effective ship. But there is no need for him to do so until the goods are ready for delivery, and clauses 1-3 provide for this information to be given to him. The ideas for these clauses are taken from the "General Conditions of Delivery of Goods between Organisations of the member countries of the Council for Mutual Economic Assitance (1968)".

Clause 5 provides for what is already the law, namely that the buyer can nominate a substitute vessel provided he does not violate his other obligations under the contract.)

DELIVERY

1. It shall be the duty of the seller to deliver the goods across the ship's rail on board the vessel nominated by the buyer at the agreed port of shipment within the period notified by the buyer to the seller. The period for loading the goods on board shall not be more than———days nor less than ———days.

(OR, in an F.A.S. contract)

It shall be the duty of the seller to deliver the goods alongside the vessel nominated by the buyer at the loading berth named by the buyer at the agreed port of shipment within the period notified by the buyer to the seller.

2. The goods may not be partially delivered.

OR

The goods may be partially delivered in instalments as follows :

3. Delivery shall be made during the dates notified by the buyer and shall be complete after the goods cross the rail of the ship and are placed on board.

4. The date of delivery shall be the date of the bill of lading.

(OR, in a F.A.S. contract)

The date of delivery shall be the date of———.

5. All transport and handling charges in connection with such delivery on board shall be payable by the seller.

(OR, in a F.A.S. contract)

All transport and handling charges in connection with such delivery alongside the vessel at the loading berth shall be payable by the seller.

6. When the buyer does not provide the vessel

nominated by him at the port of shipment during the period nominated by him, the seller shall at the expiry of such period store the goods for a period of———days from such expiry. The seller shall then notify the buyer of such storage within——— days of the commencement of such storage. The period of———days of storage may be extended by mutual agreement.

7. The goods shall be thus stored at the risk and expense of the buyer. The buyer shall also bear the cost of delivering the goods to the place of storage, and, if a vessel is later provided by the buyer, from the store on board the vessel/alongside the vessel.

8. If during the period of storage or any extension thereof the buyer nominates a vessel for delivery at the port of shipment, the seller shall within——— days of such nomination deliver the goods on board/alongside the vessel.

9. If after the expiry of the said period of storage or any extension thereof the buyer fails to nominate a vessel for delivery, the seller shall have the right to terminate the contract and sue the buyer for damages.

10. Within———days after completion of delivery on board, the seller shall inform the buyer of :

(a) The number of packages delivered ;

(b) The total weight of all the packages ;

(c) The dimensions of each package ;

(d) The nature of the packaging ;

(e) The date of sailing of the vessel ;

(f) The number of the bill of lading ; and

(g) ——— (any other information specified).

(Note : Although in theory delivery under the general law of contract is complete when the goods have crossed the ship's rail even though they are in the air, it seems more practical to define delivery as complete only when the goods have been placed on board. Clauses 1 and 5 are standard obligations of a seller under a F.O.B. and F.A.S. contract.

The word 'delivery' is only used to indicate physical transfer, and not handing over of goods which conform to the contract, as in Article 17 of ULIS.

Provisions as to storage are usual because of the exigencies of shipping. See CMEA General Conditions, Chapter VI, Section 41.

In Clause 4 (F.A.S.) the name and date of an appropriate instrument (such as a wharf receipt) will have to be inserted.

PAYMENT

1. The buyer shall open through the———Bank a confirmed irrevocable (transferable) letter of credit in favour of the seller not later than——— days before the stipulated date for delivery for the full purchase price.
2. Payment shall be made upon presentation of the following documents :
   (a) A clean bill of lading issued by the master of the ship nominated by the buyer, showing that the goods are loaded on board. A bill of lading shall be deemed to be clean when it bears no super-imposed clause or notation which expressly declares a defective condition of the goods and/or packaging.
   (b) ———
   (c) ———

(Note : Payment through letter of credit is the invariable method adopted today, and the most convenient, and therefore no provision is made for other methods. It is impossible to list the documents which have to be presented, because this will depend on the nature of the goods sold. Thus certificates of origin, analysis etc. are common. In all cases the documents should be clearly described.

Although payment and delivery are concurrent conditions, and it would be open under the general law for the buyer to open the letter of credit at (but not later than) the date of delivery, it is preferable to have it opened some time before the date of delivery.

The bank referred to should be the correspondent bank and not the originating bank.

Clause 2(a) (which of course only applies to a F.O.B. contract) contains a definition of a clean bill of lading based on Article 16 of the I.C.C. *Uniform Customs and Practice for Documentary Credits*. A "received for shipment" bill is expressly excluded.)

EXPORT LICENCE

1. It shall be the duty of the seller/buyer to use his best endeavours to obtain a licence for the export of the goods from the port of shipment.
2. The seller/buyer shall obtain such licence and communicate that fact to the buyer/seller before the goods are placed on board.
3. The party on whom such duty does not lie shall give all information and assistance to the other

party as is necessary for such other party to obtain the licence in time.

(**Note** : Since under the present law where the contract is silent on the point the circumstances of the case determine the incidence of the duty, it is generally thought prudent to expressly determine the person on whom the duty lies. Clause 3 imposes a duty to co-operate, which probably exists under the existing law).

PASSING OF RISK

The risk in regard to the goods shall pass from the seller to the buyer when the goods have passed the ship's rail and been placed on board at the agreed port of shipment.

(OR, in a F.A.S. contract)

The risk in regard to the goods shall pass from the seller to the buyer when the goods have been delivered alongside the vessel at the loading berth named by the buyer.

(**Note** : These are the invariable rules for these respective contracts. It is thus set out both in the CMEA 1968 General Conditions for Delivery (F.O.B. Chapter 11, Section 6, paragraph 2 (6) and also Incoterms 1953 (F.O.B., Buyer, Section 2, F.A.S., Buyer, Section 2). The CMEA General Conditions only pass the risk of 'accidental' loss or 'accidental' damage. The draft does not thus restrict the passing of property, and is probably more in accord with accepted law. Vide Volume 5, *British Shipping Laws*, Section 390).

Under S. 32 (3) of the English Sale of Goods Act "*unless otherwise agreed*, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller

must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit". The equivalent of this section is probably in force in many countries of the Asian African region, and it has been held that the section applies to a F.O.B. contract, with the result that if the notice is not given, contrary to normal understanding the risk will be with the seller. The specific insertion of the above draft clause would amount to an express agreement taking the contract out of the section. In any event the clauses as to shipment would ensure that the requisite notice has been given.

It will be noticed that there is no model term relating to the passing of property. It is undoubtedly the general understanding that under a F.O.B. delivery term property (together with risk) passes to the buyer when the goods are placed on board. However, under the English law relating to sales of goods, (which appears to be substantially in force over a greater part of the Asian-African region—vide section 8 of the General Note on the law relating to international sales of goods prepared by the Secretariat for 12th Session in Colombo) the time of transfer of property depends on the intention of the parties, and rules are given for discovering such intention (vide sections 17 to 19, Sale of Goods Act, 1893). On this basis it has sometimes been argued that property has passed to the buyer before delivery, or that, notwithstanding delivery on board, the seller has reserved the property to himself. The latter contention has

often succeeded on the facts of the case, notwithstanding its inconsistency with the general understanding as to the F.O.B. delivery term. A specific provision that property passes on delivery would therefore obviate uncertainty and prevent litigation. On the other hand, the reservation of the property by the seller (often done by drawing or dealing with the Bills of Lading in a particular way) is directed to the sometimes desirable object of having a security in case of default by the buyer. The courts appear to have reconciled this object with the nature of the F.O.B. contract by construing such reservations as passing the property to the buyer subject to the condition that it is to revest in the seller on the buyer's default, or as giving the seller a lien in case he is not paid. Alternatively, they have construed such a reservation as showing a deliberate non-performance of the contract by the seller of his duty to deliver, with the result that the property does not pass. Since even the model terms drafted by European trade institutions leave the passing of property untouched, and since these model terms are being drafted from the point of view of the seller, it has been thought unnecessary to restrict the right of the seller to make such a reservation. It has, however, been observed that where payment is by presentation of documents against a letter of credit, the seller is amply secured by obtaining the necessary documents, and the passing of the property becomes of little importance (Vide Vol. 5 *British Shipping Laws*, Chapters 9 & 10).

RELIEF

1. Any circumstance beyond the control of the parties, which a diligent party could not have avoided and the consequences of which he could not have prevented, shall relieve the parties from the fulfilment of their obligations where it occurs after the formation of the contract and prevents its fulfilment whether wholly or partially.

2. The party affected by a circumstance described in 1 above shall as soon as possible notify the other party of the occurrence thereof. Such notification shall contain details of the nature of the circumstance and its possible consequences. If the circumstance ceases before the contract is treated as discharged by the other party, he shall also notify the cessation.

3. As soon as possible after receipt of such notification, the other party shall inform the party notifying that
   (a) He treats the parties as relieved from the fulfilment of their obligations from the time of occurrence, or
   (b) He desires the contract to continue on different terms.

4. Where the other party informs the party notifying that he desires the contract to continue on different terms, he shall specify such terms. As soon as possible after the receipt of this information, the party notifying shall accept or reject such terms.

5. Where the party notifying rejects such terms, the contract shall be treated as if the parties were relieved from the fulfilment of their obligations from the time of the occurrence.

6. Where parties are relieved of the fulfilment of their obligations as set out above, the expenses incurred

by the parties in the performance of the contract up to the time of the occurrence he shall be divided between the parties by agreement.

7. In default of agreement it shall be determined by arbitration under the provisions as to arbitration herein contained.

OR

8. Where parties are relieved of the fulfilment of their obligations as set out above, each party shall bear the expenses incurred in the performance of the contract up to the time of the occurrence, and shall have no claim against the other party in respect thereof.

(Notes : In defining the clause providing for discharge by supervening change of circumstances (commonly called the 'force majeure clause') three approaches are possible. One is to give an exhaustive list of the circumstances constituting grounds for relief (e.g. riot, civil commotion etc.) [vide London Copra Association Contract C.I.F. (1938) clause II]. While this leads to certainty on the question as to when relief can be claimed, it can lead to injustice when some unforeseen contingency is omitted which should in all fairness be a ground for relief. The second approach is to give a list, and add general words to catch up anything omitted, e.g. "or any other causes beyond the control of the shippers"; "or force majeure". This seems to be the most popular approach. (vide Rotterdam Fibre Contract, clause 7; London Coir Association C.I.F. contract No. 3, clause 5; Rubber Trade Association of Japan, import contract C.I.F. (1956) clause 17; Rubber Trade Association of New York, import contract C.I.F. (1958) clause 9; Seed, Oil, Cake and General Produce Association C.I.F.

contract (form No. 12) clause 10; General Produce Brokers Association C.I.F. contract for dessicated coconut, clause "prevention of shipment"; London Oil and Tallow Trades Association contract for coconut oil, clause 14; Cocoa Association of London (1938) C.I.F. contract, condition 8; Rubber Trade Association of London C. I. F. contract (1940) clause 7, F. O. B. contract (1941) clause 7; E. C. E. General Conditions for the supply of plant and machinery (1953) (No. 188) clause 10.1. The third approach is to give a general description of the type of circumstances which would have a ground for relief, without a list of particular such occurrences. This is the more modern approach. Vide CMEA General Conditions, Chapter 13, clause 1; General Conditions for the supply of plant and machinery E. C. E. (1958) clause 10.1; General Conditions for the import and export of durable consumer goods E. C. E. (1961). While this approach can leave it somewhat uncertain as to what circumstances constitute grounds for relief, it is probably fairer. Also, the 'listing' approach introduces terms, such as 'rebellion', 'civil commotion', "Acts of God" which may have technical meanings in certain legal systems, and one of the aims in drafting model contracts is to use language understandable by those versed in different legal systems. The formulation in article 74 of ULIS has not been adopted because that proceeds on the basis of the intention of the parties, which is not altogether satisfactory.

(b) Many model contracts provide that upon the occurrence of a ground for relief, the party who is disabled from performing his obligation gets an automatic extension of time for performance. This course is not adopted because in many aspects

of a F.O.B. or F.A.S. contract time is of the essence. However, provision is made for the parties to keep the contract alive if they choose.

(c) In regard to acts or performance done prior to the time of discharge, two alternatives are presented. The first is the fairer provision, and is taken from sections 10.4 and 10.5 of the E. C. E. General Conditions for the supply of plant and machinery (1955). Under the second alternative, the loss lies where it falls.

ARBITRATION

1. All matters in difference between the parties relating to the contract which the parties have not been able to settle amicably shall be settled by arbitration by one member of the_____(here state the name of the arbitration tribunal) in accordance with the rules of such body. Any award so made shall be binding on the parties, and no claim shall be brought by either party in a court of law prior to the making of such an award, nor shall such claim be for any greater relief than that granted in the award.
2. The expenses of the arbitration shall be apportioned between the parties by the arbitrator in such proportions as he considers fair.
3. The arbitrator shall decide in accordance with the terms of the contract, commercial practice, and the interests of justice.

OR

The arbitrator shall decide in accordance with the law of the seller's state.

4. Judgment upon the award rendered may be entered in any court having jurisdiction.

OR

1. All matters in difference between the parties relating to the contract which the parties have not been able to settle amicably shall be settled by arbitration by two arbitrators, one to be nominated by each party.
2. The arbitrators shall decide on the rules and procedure to be followed in the arbitration.

OR

The arbitration shall be held in accordance with the rules of arbitration annexed hereto/the rules of arbitration of_____(state name of arbitral institution).

3. The arbitration shall be held in that country which the arbitrators consider most convenient regard being had to the nature of the difference in question.
4. Should the arbitrators fail to reach agreement, then the dispute shall be referred to an umpire nominated by the arbitrators. If the arbitrators fail to agree on an umpire, the umpire shall be nominated by_____.
5. Any award made by the arbitrators or umpire as the case may be shall be binding on the parties, and no claim shall be brought by either party in a court of law prior to the making of such an award, nor shall such claim be for any greater relief than that granted in the award.
6. The expenses of the arbitration shall be apportioned between the parties by the arbitrators or the umpire, as the case may be, in such proportions as they or he considers fair.
7. The arbitrators, or umpire as the case may be, shall decide in accordance with the terms of the