

## INTRODUCTORY NOTE

The topic of "Law relating to International Sale of Goods" was originally included in the programme of work of this Committee under Article 3(c) of its Statutes at the suggestion of the Government of India. A study concerning the Rules of Conflict of Laws relating to International Sales and Purchases was prepared by the Secretariat and was placed before the Committee at its Fourth Session held in Tokyo in 1961. The matter was considered by a Sub-Committee at the Tokyo Session which recommended collection of further material. It was not possible to make much progress on this subject for some time in view of the fact that there were a number of references by Member Governments under Article 3(b) of the Committee's Statutes which needed urgent consideration.

The United Nations Commission on International Trade Law at its First Session held in New York in 1968 selected for its consideration "International Sale of Goods" as a priority item. The subject was accordingly taken up at the Second Session of the UNCITRAL held in Geneva during March, 1969. In the course of discussions in the UNCITRAL the representatives of Ghana and India suggested that the Asian-African Legal Consultative Committee should be requested to revive its consideration of the subject of International Sale of Goods and that it should be taken up as a priority item at the Eleventh Session of the Committee which was to be held in Accra in January 1970.

At the Accra Session, the Committee had before it a Brief prepared by the Secretariat dealing with the topics which were generally discussed at the Second Session of the UNCITRAL in March 1969. These topics included :—

- (1) The law relating to International Sale of Goods in general ;
- (2) The Hague Conventions of 1964, that is, the Conventions relating to a Uniform Law on the International Sale of Goods and the Convention on the Uniform Law on the Formation of Contracts in International Sale of Goods ;
- (3) The Hague Convention on the Law applicable to International Sale of Goods, 1955 ;
- (4) Standard Contracts and General Conditions of Sale ;
- (5) Incoterms and other Trade terms ;
- (6) Time-Limits and Limitations (Prescription) in the field of International Sale of Goods.

The Committee considered the subject in the plenary and after noting the views and comments made by various delegations as well as by the Secretary-General of the Hague Conference, the Secretary of the UNCITRAL, and the representatives of the UN Economic Commission for Africa and the Arab League, the Committee decided to constitute a Sub-Committee composed of the representatives of Ceylon, Ghana, India, Japan, Nigeria, Pakistan and U.A.R. for giving further consideration to the subject. The Sub-Committee held three meetings during the Accra Session, in which, apart from the Members of the Sub-Committee, observers from other Governments and international organisations also participated. The Sub-Committee primarily concentrated its attention on two points, namely, (1) how to increase the familiarity of the member Governments with the work done by the UNCITRAL and other organisations and (2) make recommendations regarding the manner in which the subject may be discussed in the Committee on a regular basis.

The Sub-Committee also discussed the question of conclusion and adoption of standard or model contracts, particularly in relation to the commodities of special interest to buyers and sellers in the Asian-African region. The secretary of the UNCITRAL, who attended the Sub-Committee meetings, had enquired whether the Committee would consider the desirability of holding regional conferences to encourage the conclusion and adoption of such model or standard contracts and cited the example of UN Economic Commission for Europe which had brought together sellers and buyers of specific commodities such as plant and machinery, lumber, citrus etc. and had adopted standard or model contracts relating thereto. The Sub-Committee was of the view that each Government would have to consider the desirability of drawing up of model or standard contracts in co-operation with the trading organisations and interests concerned and that the matter should be reviewed by the Committee at its next session.

The Committee took up this subject for further consideration at its Twelfth Session held in Colombo in January 1971 in the light of further work done in the UNCITRAL and the replies received from Governments and trading organisations in the Asian-African States to a circular letter issued by the Committee's Secretariat inviting their views regarding the desirability of drawing up of model or standard contracts and the commodities in respect of which adoption of such model or standard contracts or General Conditions of Sale might be helpful.

The Committee after some discussion on the subject in the plenary decided to refer the same for detailed consideration to a Sub-Committee whose composition was the same as that appointed at the Accra Session with the addition of Iraq. The meetings of the Sub-Committee were attended also by the Secretary-General of the International Institute for the Unification of Private Law (UNIDROIT) and the Secretary of the UNCITRAL. The questions which were mainly

considered by the Sub-Committee were : (1) adoption of standard or model contracts in relation to specific commodities of special interest to buyers and sellers of the Asian-African region; (2) Articles 1 to 17 of the Convention on Uniform Law on International Sales, 1964 with a view to determine as to how far these provisions should be acceptable to the countries of the Asian-African region, and (3) Law of Prescription (Limitations) in the field of International Sale of Goods on the basis of the Questionnaire and Preliminary Draft prepared by the Working Group appointed by the UNCITRAL. The Sub-Committee also briefly discussed other matters pending consideration of the UNCITRAL, namely, Negotiable Instruments, International Shipping Legislation and International Commercial Arbitration.

Subsequent to the Colombo Session a meeting was held in Delhi between the Rapporteur and the Joint Rapporteur of the Sub-Committee along with the Secretary-General of the Committee in order to determine as to what specific matters should be brought up before the Committee at its Lagos Session with regard to the subject of International Sale of Goods. It was felt that since the duration of the Lagos Session had been shortened to a period of eight days and taking into account that most of the time at the disposal of the Committee would have to be devoted to the Law of the Sea, it would be unrealistic to bring up too many questions for consideration of the Committee. In the light of above it was considered that the only matter which the Committee should be asked to consider at the Lagos Session is the question of adoption of standard or model contracts in commodities of special interest to the Asian-African region as this was a field in which the Committee could make its own original and concrete contribution in the interest of developing countries of Asia and Africa.

Accordingly at the Lagos Session, the Standing Sub-Committee on the International Sale of Goods took up for discussion only the draft standard form of contract for sale

of consumer goods prepared by the Joint Rapporteur after taking into account the various terms and conditions in the model contracts and general conditions of sale in use in various regions of the world. The Assistant Secretary of the United Nations Commission on International Trade Law and the Secretary-General of the International Institute for the Unification of Private Law also attended the meetings of the Sub-Committee. After some discussion, the Sub-Committee adopted a report recommending certain amendments to the draft standard form of contract and directed the Secretariat of the Committee to collect from the Member Countries information on the practices that obtain in those countries in relation to the question of arbitration clauses used in the contracts relating to the types of transactions intended to be governed by the proposed standard form of contract in order that the Sub-Committee may make further studies in this regard.

## RAPPORTEUR'S REPORT

At the Session of the Committee held in 1971 in Colombo the topics that came up for consideration were the following :

- (a) Model contracts;
- (b) Articles 1 to 17 of ULIS;
- (c) The law of prescription in relation to international sale of goods;
- (d) The law of negotiable instruments;
- (e) International shipping legislation; and
- (f) International arbitration.

In regard to topics numbered (b) to (f), work has proceeded under the auspices of UNCITRAL, and a short account of this prepared by the Secretariat has been included in the brief of documents.

In the field of model contracts, the following decisions were taken by the Committee :

- (1) 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.
- (2) That the following commodities were suitable as a starting point for such model contracts:—

Rubber, timber, rice, textiles, machinery, oil, and coconut products. It was also agreed that the member governments and their Chambers be approached to indicate other commodities.

- (3) That work should 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 on the subject. This was to consist in the collection of model contracts in use on the topics under consideration, and copies of the 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 analysis and comment would be circulated to Governments, commercial agencies and other interested parties for their comment.

Thereafter, if a conference was to be convened, it will be a meeting of legal and commercial experts in the field of study under the chairmanship of an official of an international organisation, and with the co-operation of UNCITRAL, ECA, ECAFE, and such other organisations as might be considered necessary.

This decision of the Committee was referred to in the report of the Secretary-General of the United Nations at the Fourth Session of UNCITRAL held on 29th March, 1971 (Document A/CN. 9/54) in the following terms : "It should, however, be noted that the Asian-African Legal Consultative Committee, an inter-governmental organisation, has shown considerable interest in the subject of general conditions of sale and standard contracts. At its Twelfth Session held in January 1971 in Colombo (Ceylon) the subject was entrusted to a Sub-Committee to determine whether, in the light of ECE and CMEA general conditions, it was desirable to adopt standard or model contracts in respect of commodities of special interest to buyers and sellers of the Asian-African region. On the recommendation of this Sub-Committee, the Committee decided to investigate the need for developing model contracts for the sale of specific commodities such as rubber, timber, rice, textiles, machinery, oil and coconut products; following this investigation, the Committee plans to consider convening, in collaboration with United Nations agencies, of an international conference of legal and commer-

cial experts of the Asian-African region."

Steps have been taken by the Secretariat of the Committee to implement the decisions taken at the Colombo Session. Thus member Governments and their trade Chambers were approached with a view to ascertaining their views on model contracts, and the commodities in respect of which such contracts were desirable. Extracts from the replies received are contained in the brief of documents, but can be summarized as follows :

1. *KUWAIT* was not in favour of the drafting of standard or model contracts.
2. *TANGANYIKA Association of Chambers of Commerce* supported the proposals contained above both as regards the method of work and the commodities in question.
3. *SINGAPORE International Chamber of Commerce* sent detailed comments.
4. *Chamber of Commerce of the REPUBLIC OF MALI* supported the proposals, and suggested the further commodities of hides, groundnuts, groundnut oil and other tropical analogous products.
5. *The Government of CAMBODIA* supported the proposals.
6. *The Government of KENYA* supported the proposals, and suggested the following additional commodities : meat products, wattle extracts, maize, wheat, bananas, sorghum and beans.
7. *The Government of the PHILIPPINES* supported the proposals, and suggested that the list of topics on which such contracts should be prepared should not be restricted.
8. *ECAFE* was interested in the proposals.
9. *The JORDAN Chambers of Commerce* supported the proposals, and suggested as commodities all raw

materials and machinery.

10. *The JORDAN Government* supported the proposals.
11. *The Government of MALAGASY* supported the proposals.
12. *The Government of NEPAL* supported the proposals. It suggested as additional commodities jute, jute goods, and timber.
13. *The Government of MONGOLIA* supported the proposals.
14. *The Government of LIBERIA* was studying the matter.
15. *The Addis Ababa Chamber of Commerce* was studying the matter.
16. *The Government of TURKEY* was studying the matter.
17. *The Government of SINGAPORE* indicated that a contract was being finalized for trade in technically specified rubber.
18. *The CEYLON Chamber of Commerce* supported the proposals, and suggested tea, rubber, and coconut products as commodities.

It will be noted that by far the larger number of responses supported the proposals mentioned above.

The Secretariat was also supplied by UNCITRAL with copies of certain general conditions of sale and standard contracts (annexures to document A/CN.9/54). These general conditions of sale and standard contracts have been subjected to an analysis by UNCITRAL. (Document A/CN.9/54). Both the general conditions of sale and standard contracts are contained in the brief of documents together with the analysis.

In the light of the interest shown by member governments and their trade associations in the subject of model contracts, it was decided that it was desirable to