

incorporated in a revised study prepared by the Committee's Secretariat which was circulated to the Asian-African delegations who were to attend the U.N. Conference on Carriage of Goods by Sea at Hamburg.

(IV) LAW RELATING TO THE INTERNATIONAL SALE OF GOODS

The United Nations Commission on International Trade Law (UNCITRAL), at its second session held in March 1969, established a Working Group on the International Sale of Goods and requested it to ascertain which modifications of the text of Uniform Law of International Sale of Goods (ULIS) annexed to the Hague Convention of 1964, might render such text capable of wider acceptance by countries of different legal, social and economic systems and to elaborate, if necessary, a new text reflecting such modifications.

The Working Group on the International Sale of Goods held its first session in January 1970, considered certain selected aspects of the Hague Convention of 1974 and reported to the third session of the Commission. The Commission, at its third session, directed the Working Group to "consider ULIS systematically, chapter by chapter, giving priority to Articles 1 to 17".

Pursuant to the aforesaid decision of the Commission, the Working Group took up its assigned task at its second session held in December 1970. At its third session held in January 1978, the Working Group continued its consideration of Articles 1 to 6 of ULIS and undertook revision of Articles 18 to 55. At its fourth session held in January-February 1973, the Working Group continued consideration of those articles on which no final decision could be taken at its third session and proceeded with the revision of Articles 56 to 70 of ULIS setting forth the obligations of the buyer. Furthermore, it was decided at this session, that the ULIS remedial provisions relating to the breach of

contract by the seller contained in Articles 26 to 29, 30 to 32, 41 to 49, 50 to 51, 52 to 53 and 55 ought to be replaced by a single unified set of remedial provisions. The reasons advanced in favour of this unification were (i) that such unification would make for greater simplicity and clarity; (ii) that a unified presentation of the substantive duties of the seller would make it easier for merchants to understand and perform their obligations; and (iii) that repetitive and overlapping provisions would be omitted, thereby simplifying and shortening the text.

The Working Group, at its fifth session held in January-February 1974, continued its consideration of Articles 58 to 70 of ULIS dealing with the obligations of the buyer and initiated revision of Articles 71 to 101 of ULIS. Articles 71 to 95 set forth provisions common to the obligations of the seller and of the buyer, and Articles 96 to 101 provided rules on the passing of the risk. Two important decisions were taken at this session. The first decision related to the establishment of a single unified set of remedial provisions applicable to the breach of the contract by the buyer. ULIS had set forth three sets of provisions in this respect, e.g. Articles 61 to 64 dealt with remedies for non-payment; Articles 66 to 68 dealt with failure to take delivery; and Articles 70 provided remedies for failure to perform 'any other' obligation of the buyer. The second decision related to Chapter VI of ULIS (Articles 96 to 101) which laid down rules on the passing of risk. Since these rules were based on the concept of 'delivery' as defined in Article 19 of ULIS, it was felt that the law on the subject was made difficult for the merchants. To make the law clear and precise, the Working Group reformulated the rules on the passing of the risk in terms of the designated steps to be taken by the seller under the contract.

At its sixth session held in January-February 1975, the Working Group considered only those articles of the revised ULIS on which no final decision could be reached at its

earlier sessions. The Working Group decided to draft the revised text in the form of an integrated convention and entrusted this task to a Drafting Party.

The Working Group held its seventh session in January 1976. At this session the Working Group completed its consideration of pending questions with respect to Articles 57 to 69 of the text of the Draft Convention adopted at its previous session and certain other articles. The Working Group thereafter considered the final text of the Draft Convention and adopted it by consensus, thereby completing the mandate entrusted to it.

The Draft Convention on the International Sale of Goods, as adopted by the Working Group, was placed before the Commission at its ninth session (1976). The Commission decided to consider the Draft Convention at its tenth session in the light of the comments that might be received from governments and interested international organisations.

At its tenth session held from 23 May to 17 June 1977, the Commission established a Committee of the Whole-I to consider the Draft Convention and requested it to report back to it. This Committee met from 23 May to 17 June and submitted its report to the Commission on 17 June. The Commission accepted the report of the Committee and the recommendations contained therein and requested the U.N. Secretary-General to prepare a commentary on the Draft Convention and to circulate the latter along with the commentary to governments and interested international organisations for their views and comments. Also the Commission recommended to the U.N. General Assembly to convene a Conference of Plenipotentiaries, at an appropriate time, to conclude a Convention on the International Sale of Goods on the basis of the Draft Convention approved by it.

Work of the AALCC

The Committee, at its Accra Session held in 1970, had taken a decision that the Committee and its Secretariat should give considerable attention to trade law matters and that in that context it should undertake a study of the subject of international sale of goods with a view to assisting the member governments in their examination of the work of UNCITRAL and to prepare them for any Plenipotentiary Conference that might be convoked by the United Nations. With that goal in view, the Committee first established a Standing Sub-Committee on International Sale of Goods, composed of the representatives of Ceylon, Ghana, India, Japan, Nigeria, Pakistan and U.A.R. and entrusted it with a special responsibility to familiarize the member governments with the work of UNCITRAL and to deal with trade law matters generally.

Since the Accra Session (1970), the Standing Sub-Committee on the International Sale of Goods and the Secretariat of the Committee have been closely following the work of UNCITRAL. The Secretariat, in particular, has submitted several studies to member governments from time to time. The work accomplished so far in respect of the international sale of the goods is as follows :

(i) *Preparation of standard contracts or general conditions of sale in respect of commodities of special interest to buyers and sellers in the Asian-African region* : A standard form of F.O.B. contract and another standard form of F.A.S contract, both applicable in respect of commodities like grain, rubber, oil, coconut products, spices and other similar goods, have been finalised and distributed among the member governments, certain other Asian-African governments, and trading circles in this region for use in international sales transactions. A standard form of C.I.F. (Maritime) contract and a set of corresponding General Conditions of Sale, applicable in respect of light machinery

and durable consumer goods which are generally imported by countries in this region have also been prepared. These are, however, pending finalisation by the Group of Experts meeting which would be convened next year.

(ii) *Prescription (Limitation) in the International Sale of Goods*: At its fifth session held in 1972, UNCITRAL had adopted the text of a Draft Convention on Prescription (Limitation) in the field of International Sale of Goods. In order to enable the member governments and other governments in the region to evaluate the Draft Convention and to form their views on it, the Committee's Secretariat had prepared a commentary on the Draft Convention, article by article. Subsequently, in response to a letter addressed to the Committee calling for its comments and proposals, so that they could be placed before the then proposed U.N. Conference on Prescription, the Standing Sub-Committee examined the provisions during the New Delhi Session (1973). The Sub-Committee, while generally approving the Draft Convention as a workable compromise, made a number of suggestions in relation to various articles of the Draft Convention, which were endorsed by the Committee and later on considered by the U.N. Conference on Prescription.

(iii) *Revision of the Hague Convention of 1964 on the International Sale of Goods*: Articles 1 to 17 of the Hague Convention, as revised by the Working Group on the International Sale of Goods, were examined by the Standing Sub-Committee on the International Sale of Goods during the Colombo Session of the Committee (1971) in order to determine whether or not those provisions were acceptable to the countries of this region and a report was transmitted to the UNCITRAL Working Group on that subject. Thereafter, the Committee's Secretariat continued to keep under its review the work of the UNCITRAL Working Group until its culmination in the adoption of a Draft Convention on the International Sale of Goods by UNCITRAL.

Baghdad Session (1977)

At the Baghdad Session, the Standing Sub-Committee on Trade Law Matters had recommended to the Committee that the Draft Convention on the International Sale of Goods, which was likely to be finalized by UNCITRAL at its tenth session (May-June 1977), will be a suitable item for its consideration at its next session. This recommendation was endorsed by the Committee in the Plenary.

Pursuant to the above decision, the Committee's Secretariat prepared a study on the Draft Convention on the International Sale of Goods adopted by UNCITRAL at its tenth session, with a view to assist the Standing Sub-Committee on International Trade Law Matters in its examination of the Draft Convention at the Doha Session of the Committee. The study set forth the genesis of each article followed by a detailed analysis of its provisions. Also, wherever possible, a brief summary of the divergent views expressed in respect of any particular provision either in the meetings of the Working Group or at the tenth session of UNCITRAL was given in order to give a complete picture of the preparatory process through which these articles had passed.

Doha Session (1978)

During the Doha Session, the Standing Sub-Committee on International Trade Law Matters examined the UNCITRAL Draft Convention article by article on the basis of the study prepared by the Committee's Secretariat. The Sub-Committee was, however, able to consider Articles 1 to 23 only and therefore decided to continue its consideration of the draft convention at the next session of the Committee and to concentrate its consideration of those articles on which Delegations would submit comments. The Sub-Committee was not, therefore in a position to state its opinion on the Draft Convention as a whole. The Sub-

Committee was, however, of the opinion that among the observations on the Draft Convention which the Committee should in due course submit to its member States participating in the Conference to be convened by the General Assembly of the United Nations in 1980 or 1981, should be the following :

(a) *Article 1, para. 1* : It should be specified that the requirement of having places of business in different States should obtain at the time of the conclusion of the contract and that the Convention would apply even if that requirement was no longer met when a dispute between a buyer and a seller actually arose.

(b) *Article 5* : It was noted that, unlike the Convention on the Limitation Period in the International Sale of Goods adopted in 1974, the Draft Convention did not set forth a definition of the term 'party'. The Sub-Committee was of the opinion that in view of the participation of State agencies in international trade, the Draft Convention should contain such a definition.

(c) *Article 9* : The Sub-Committee decided to defer consideration of Article 9 until after its consideration of subsequent articles of the Draft Convention dealing with the rights and duties of the parties.

(d) *Article 14* : The article states, *inter alia*, that the seller must "transfer the property in the goods as required by the contract and this Convention". It was noted that the Draft Convention did not set forth any provision concerning the transfer of property. Accordingly, the article should be redrafted in such a way so as to impose an obligation on the seller to take such steps as are necessary to transfer the property in the goods.

(e) *Article 23* : (1) The Sub-Committee was of the view that Article 23 was one of the key provisions of the Draft

Convention in that it affected the basic right of the buyer to avail himself of the remedies under the Convention (avoidance of the contract for fundamental breach, claim for damages, and reduction of the price) in case the goods did not conform to the contract. Two main observations were made: It was noted that Article 23, para. 1, stated that the buyer "loses the right" to rely on a lack of conformity if he did not give notice to the seller within a reasonable time. The view was expressed that failure to give notice should not result in loss of right but should give rise to damages which the buyer should pay to the seller in cases where he (the seller) suffered damages because of the failure of the buyer to give notice. Instead, the article should establish the presumption that if the seller did not receive, within a reasonable time, notice that the goods were defective, he was entitled to assume that the goods had been handed over to the buyer in conformity with the contract. In such a case, the burden of proof that the goods were delivered in a defective state should then fall on the buyer. In this connection, it was suggested that the revision of the rule could be inspired by a similar provision in the UNCITRAL Draft Convention on the Carriage of Goods by Sea (Article 19).

(2) The Sub-Committee was of the view that the termination of the right of the buyer to rely on lack of conformity as provided for in paragraph 2 of Article 23 was not acceptable in that the provision did not sufficiently protect the buyer's right to rely on latent defects which, particularly in the case of complicated machinery, could become evident only after a period of time had passed. The two-year time-limit was considered not to be sufficient, and the Sub-Committee, therefore, suggested that consideration be given at the Conference of Plenipotentiaries to the possibility of extending the period of two years to four years. In this connection, it was noted by the Sub-Committee that under the Prescription Convention (Articles 8 and 10) the buyer must commence judicial proceedings against a seller within

four years of the date on which the goods were actually handed over.

In the course of the discussions on Articles 1 to 23 of the Draft Convention, various other observations were made designed to improve the clarity of the provisions. These observations were not listed by reason of the fact that the essential task of the Sub-Committee was to draw attention to those matters in which the balance between the rights and duties of the seller and the buyer was, in its opinion, not in accordance with the policies which underlay the work of the Committee.

Finally, the Sub-Committee recommended that apart from continuing the examination of the UNCITRAL Draft Convention on the International Sale of Goods, it should also examine at its next session the UNCITRAL Draft Convention on the Formation of Contracts for the International Sale of Goods and the Draft Convention on International Bills of Exchange and International Promissory Notes which was then to be completed by UNCITRAL in the near future. The recommendations of the Sub-Committee were endorsed by the Committee on 23 January 1978.