

by virtue of which particular rights of the buyer or seller might be abrogated (e.g. to reject the goods, to refuse to deliver the goods or to claim damages for non-conformity with the terms of the contract of sale) since these could most conveniently be dealt with by the Working Group on the international sale of goods.

"3. The Working Group shall, in its work, pay special attention, *inter alia*, to the following points:

- (a) The moment from which time begins to run;
- (b) The duration of the period of prescription;
- (c) The circumstances in which the period may be suspended or interrupted;
- (d) The circumstances in which the period may be terminated;
- (e) To what extent, if any, the prescription period should be capable of variation by agreement of the parties;
- (f) Whether the issue of prescription should be raised by the court *suo officio* or only at the instance of the parties;
- (g) Whether the preliminary draft convention should take the form of a uniform or a model law;
- (h) Whether it would be necessary to state that the rules of preliminary draft convention would take effect as rules of substance or procedure;
- (i) To what extent it would still be necessary to have regard to the rules of conflict of laws.

"4. The Commission requests the Secretary-General to notify intergovernmental and international non-governmental organizations active in the field of the date of the meeting of the Working Group. The Secretary-General is also requested to send to the members of the Commission as well as to the foregoing organizations the studies referred to in paragraph 41 above for submission of their comments to the Working Group as soon as possible. The Secretary-General is further requested to transmit to the members of the Commission and the same organizations any drafts produced by the Working Group. It is envisaged that a preliminary draft of a convention can be completed in 1970 or 1971 and the Commission requests the Working Group to report its progress to the Commission at its third session.

47. With regard to the Working Group established under the above decision, several representatives stated that the composition of that Working Group which included the four members of the Commission which had submitted studies on the subject of time-limits and limitations (prescription), was a special arrangement and should not be considered as a precedent for the composition of future working groups that might be established by the Commission.

C. General conditions of sale and standard contracts, Incoterms and other trade terms

48. The subject of general conditions of sale and standard contracts, Incoterms and other trade terms, was considered by the Commission during a general

debate held in the course of its 28th to 31st meetings, on 4, 5 and 6 March 1969, and by Committee I in the course of its 8th meeting. At that meeting, Committee I decided that sub-items (d) (general conditions of sale and standard contracts) and (e) (Incoterms and other trade terms) of item 4 of the agenda should be considered together in view of their inter-relationship. The Commission concurred with this view and this report therefore deals with both these sub-items under one heading. A summary of the observations made by members of the Commission and observers of organizations is set out in paragraphs 50 to 58 below.

49. The Commission had before it, with regard to general conditions of sale and standard contracts, a report by the Secretary-General (A/CN.9/18) and a proposal submitted by the United States (A/CN.9/L.8) and, with regard to Incoterms and other trade terms, a note by the Secretary-General (A/CN.9/14), reproducing a report submitted by the International Chamber of Commerce (ICC) for the second session of the Commission. Several representatives expressed their appreciation for the report of ICC.

50. In discussing the possibilities of promoting the wider use of the existing general conditions of sale and standard contracts as well as of Incoterms, the Commission considered the role of these formulations in the process of the unification of the law of the international sale of goods. Several representatives were of the opinion that there was an interconnexion between general conditions and a uniform law on sale of goods, in view of the fact that the provisions of a uniform law should allow some room for the application of general conditions. The view was also expressed that even if there was no widely accepted uniform law on sales, general conditions of sale and standard contracts would still be useful.

51. One representative expressed the opinion that general conditions of sale offered the best prospects of unification, since they were essentially of a practical nature and were more readily and speedily accepted than conventions involving basic legal principles. Other representatives pointed out that the application of general conditions could help to eliminate international commercial disputes and might ultimately lead to the establishment of a uniform trade law.

52. Several representatives commented on the legal character of general conditions and standard contracts. It was pointed out that general conditions, such as those drawn up by the United Nations Economic Commission for Europe (ECE), are applicable only by agreement of the parties and that mandatory rules of the applicable municipal law prevailed over them in the event of conflict. The 1968 General Conditions of the Council for Mutual Economic Assistance (CMEA) on the other hand, being of a mandatory character and thus applicable independently of the will of the parties, prevailed over the whole body of domestic law, including its mandatory rules. Because of that difference, the CMEA General Conditions were considered as being closer in character to a uniform law than to general conditions.

53. The Commission was generally agreed that out of the great number of existing general conditions of

sale and standard contracts, the wider use of those prepared by the United Nations Economic Commission for Europe (ECE) should be promoted. It was considered whether the application outside Europe of these formulations in their present form could be extended. While some of the speakers were of the opinion that the application of the ECE general conditions would not encounter any legal obstacle in countries outside Europe, others expressed the view that some modifications might be needed in order to make these formulations more widely acceptable. One representative considered that some scope should be allowed to economically weaker countries to depart from the provisions of the above-mentioned general conditions for the purpose of protecting their interests.

54. It was also pointed out that the ECE general conditions were not well known outside Europe and this impeded their wider use. The Commission was unanimous in the opinion that the widespread dissemination of the ECE formulations would help in making them more widely known and in promoting their wider use. One representative expressed the view that although he favoured the widespread dissemination of the ECE general conditions, he did not favour recommending these texts as long as no agreement had been reached on the principles governing the international sale of goods.

55. It was generally considered that the method which was most likely to promote the wider use of the ECE general conditions of sale and standard contracts would be the establishment of a joint committee of the four United Nations regional economic commissions or the convening of a meeting of these organs for exploring the possibility of the use, in all regions, of these formulations and to consider any necessary revision of the texts. It was suggested by some representatives that the Organization of American States, the Organization of African Unity and the Economic Commission for Central America should also be invited to participate in such a meeting. At the same time it was emphasized that a considerable amount of preparatory work would be needed before the convening of a meeting of this kind and the financial implications would also have to be considered. In this connexion the Commission welcomed the generous offer made by the representative of Japan to contribute to its work by preparing for its use a comparative study of the ECE general conditions.

56. Several representatives suggested that information on the CMEA General Conditions should also be disseminated. The observer from CMEA said that the secretariat of CMEA would be prepared to supply an English translation of the CMEA general conditions for dissemination.

57. As regards Incoterms, it was generally considered that they should be retained in their present form and their wider use should be promoted. One representative pointed out some differences between interpretations in Incoterms and the definitions used in the United States Uniform Commercial Code.

58. Some representatives stressed the need for formulating new general conditions for tropical products and for use in exports from developing countries.

Decisions of the Commission

59. At its 12th meeting, on 18 March 1969, Committee I approved a recommendation for submission to the Commission.

60. At its 44th meeting, on 26 March 1969, the Commission considered the recommendation of Committee I and unanimously adopted the following decision:

"The Commission decides:

"With regard to general conditions of sale and standard contracts:

"1. (a) To request the Secretary-General to transmit the text of the ECE general conditions relating to plant, machinery, engineering goods and lumber to the Executive Secretaries of the Economic Commission for Africa (ECA), the Economic Commission for Asia and the Far East (ECAFE), and the Economic Commission for Latin America (ECLA), as well as to other regional organizations active in this field;

"(b) To request the Secretary-General to make the aforementioned general conditions available in adequate number of copies and in the appropriate languages; the general conditions should be accompanied by an explanatory note describing, *inter alia*, the purpose of the ECE general conditions, and the practical advantages of the use of general conditions in international commercial transactions;

"(c) To request the regional economic commissions, on receiving the above-mentioned ECE general conditions, to consult the Governments of the respective regions and/or interested trade circles for the purpose of obtaining their views and comments on: (i) the desirability of extending the use of the ECE general conditions to the regions concerned; (ii) whether there are gaps or shortcomings in the ECE general conditions from the point of view of the trade interests of the regions concerned and whether, in particular, it would be desirable to formulate other general conditions for products of special interest to those regions; (iii) whether it would be desirable to convene one or more committees or study groups, on a worldwide or more limited scale, whereby with the participation (if appropriate) of an expert appointed by the Secretary-General, matters raised at a regional level would be discussed and clarified:

"(d) To request the other organizations to which the ECE general conditions are transmitted to express their views on points (i), (ii) and (iii) of subparagraph (c) above;

"(e) The views and comments sought from the regional economic commissions and other organizations should be transmitted to the Secretary-General, if possible, by 31 October 1969;

"(f) To request the Secretary-General to submit, together with the relevant ECE general conditions, a report to the third session of the Commission which should contain (if appropriate) an analysis of the views and comments received from the regional economic commissions and other organizations concerned;

“(g) To give, at an appropriate time, consideration to the feasibility of developing general conditions embracing a wider scope of commodities than the existing specific formulations. Consideration of the feasibility of this work should be taken up after there has been an opportunity to study the views and comments requested under sub-paragraphs (c) and (d) above.

“(h) To welcome the generous offer made by the representative of Japan to contribute to the work of the Commission by preparing for its use a comparative study of the ECE general conditions;

“*With regard to General Conditions of Delivery (GCD) of 1968 prepared by the Council of Mutual Economic Assistance (CMEA):*

“2. (a) To request the Secretary-General to invite the CMEA to furnish an adequate number of copies of the General Conditions of Delivery (GCD) of 1968 in English, accompanied by an explanatory note;

“(b) To request the Secretary-General to transmit in the four languages of the Commission, as appropriate, the above-mentioned General Conditions of Delivery and explanatory note to members of the Commission and to the Economic Commission for Africa, the Economic Commission for Asia and the Far East, the Economic Commission for Europe and the Economic Commission for Latin America, for information.

“*With regard to Incoterms 1953:*

“3. (a) To request the Secretary-General to inform the International Chamber of Commerce that, in the view of the Commission, it would be desirable to give the widest possible dissemination to Incoterms 1953 in order to encourage their world-wide use in international trade.

“(b) To request the Secretary-General to bring the views of the Commission concerning Incoterms 1953 to the attention of the United Nations regional economic commissions in connexion with their consideration of the ECE general conditions.

D. *Co-ordination of the activities of organizations in the field of international sale of goods*

61. The Commission, at its 28th meeting, on 4 March 1969, requested Committee I to consider the question of co-ordination in respect of all the items under international sale of goods, i.e. the problems of the unification of norms governing the international sale of goods and the laws applicable to international sales, time-limits and limitations (prescription), general conditions of sale and standard contracts, and Incoterms and other trade terms.

62. The Commission was of the opinion that its decisions in respect of each of those items and the working methods contemplated therein would lead to a satisfactory co-ordination of the work of organizations in the field of international sale of goods and that, at the present stage of its work, no further action was required in respect of co-ordination of those items.

CHAPTER III

INTERNATIONAL PAYMENTS

A. *Negotiable instruments*

63. The subject of the harmonization and unification of the law of negotiable instruments was considered by the Commission during a general debate held in the course of its 29th to 31st meetings, on 5 and 6 March 1969, and by Committee II in the course of seven meetings, on 6, 7, 13 and 14 March 1969. A summary of the observations made by members of the Commission and observers of organizations during those meetings is set out in paragraphs 65 to 81 below.

64. The Commission had before it the “Preliminary Report on the Possibilities of Extending the Unification of the Law of Bills of Exchange and Cheques” (A/CN.9/19/annex 1) prepared by the International Institute for the Unification of Private Law (UNIDROIT) for the second session of the Commission. That report examines the solutions by which unification could, in principle, be promoted. Many representatives who spoke on the subject of negotiable instruments expressed their appreciation of the report by UNIDROIT which, although of a preliminary nature, significantly contributed to the work of the Commission.

65. One representative informed the Commission of the existence of a draft uniform law on negotiable instruments for Central America prepared under the auspices of the permanent secretariat of the Central American Treaty for Economic Integration. The observer of the Organization of American States (OAS) informed the Commission that a Draft Uniform Law on Negotiable Instruments for Latin America had been prepared under the auspices of the Inter-American Development Bank, and had been considered by the Inter-American Juridical Committee which decided to consider specific forms of negotiable instruments, starting with cheques and bills of exchange, both for international circulation only.

66. In evaluating the measures that could be adopted in the interest of unification, the Commission noted that there were two principal systems of negotiable instruments law, i.e. that represented by the Geneva Conventions of 1930 and 1931 and that represented by the English Bill of Exchange Act and the United States Negotiable Instruments Law (superseded by article 3 of the Uniform Commercial Code). The Commission recognized that even within these systems complete unification had not yet been achieved. With respect to the system of the Geneva Conventions, some important problems, such as *provision*, were not dealt with by the uniform laws forming the annex to those Conventions, while also the uniformity which those laws sought to establish had further been compromised by reservations. Similarly, divergencies did exist between the English and American acts and, consequently, in the laws of those countries which had modelled their legislation on one or the other of these acts. There was, however, general consensus that a parallel unification of the two main systems was to be regarded as a difficult and long-term task and that the work of unification should be concentrated on