

## I. INTERNATIONAL SALE OF GOODS

### 1. Report of the Working Group on the International Sale of Goods on the work of its seventh session (Geneva, 5-16 January 1976) (A/CN.9/116)

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#### INTRODUCTION

1. The Working Group on the International Sale of Goods was established by the United Nations Commission on International Trade Law at its second session held in 1969. The Commission at its 44th meeting on 26 March 1969, requested the Working Group to ascertain which modifications of the Hague Convention of 1964 relating to a Uniform Law on the International Sale of Goods might render it capable of wider acceptance by countries of different legal, social and economic systems and to elaborate a new text reflecting such modifications.<sup>1</sup>

2. The Working Group is currently composed of the following States members of the Commission: Austria, Brazil, Czechoslovakia, France, Ghana, Hungary, India, Japan, Kenya, Mexico, Philippines, Sierra Leone, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.

3. The Working Group held its seventh session at the Office of the United Nations at Geneva from 5 January to 16 January 1976. All members of the Working Group were represented except Kenya, the Philippines and Sierra Leone.

4. The session was also attended by observers from the following members of the Commission: Argentina, Australia, Federal Republic of Germany, Greece, Norway and Somalia, and by observers from the following international organizations: the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (UNIDROIT) and the International Chamber of Commerce (ICC).

5. The Working Group elected the following officers:

Chairman ... Mr. Jorge Barrera-Graf (Mexico)  
Rapporteur ... Mr. Roland Loewe (Austria)

<sup>1</sup> Report of the United Nations Commission on International Trade Law on the work of its second session (1969), *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18 (A/7618)* (UNCITRAL Yearbook, vol. I: 1968-1970, part two, II, A).

Pending the arrival of the Chairman, the Working Group elected Mr. Gyula Eörsi (Hungary) as Acting Chairman. Mr. Eörsi presided over the first two meetings of the Working Group, held on 5 January 1976.

6. The following documents were placed before the Working Group:

(a) Provisional agenda and annotations (A/CN.9/WG.2/WP.24);

(b) Revised text of the draft Convention on the International Sale of Goods as approved or deferred by the Working Group at its first six sessions (A/CN.9/100, annex I);\*

(c) Comments and proposals by Governments relating to the revised text of a uniform law on the international sale of goods (A/CN.9/WG.2/WP.20, reproduced as A/CN.9/100, annex II);\*

(d) Pending questions with respect to the revised text of a uniform law on the international sale of goods: report of the Secretary-General (A/CN.9/WG.2/WP.21 and Add.1 reproduced as A/CN.9/100, annexes III and IV);\*\*

(e) Draft commentary on the draft Convention on the International Sale of Goods: note by the Secretary-General (A/CN.9/WG.2/WP.22);

(f) Comments and proposals by the observer of Norway on the draft Convention on the International Sale of Goods, as approved or deferred by the Working Group at its first six sessions (A/CN.9/WG.2/WP.25);

(g) Hague Convention of 1964 relating to a uniform law on the formation of contracts for the international sale of goods, with annexes (extract from *Register of Texts and Conventions and other Instruments concerning International Trade Law*, vol. I (United Nations Publication, Sales No. E.71.V.3));

(h) Analysis of replies and comments by Governments on the Hague Convention of 1964 relating

\* UNCITRAL Yearbook, Vol. VI: 1975, part two, I, 3.

\*\* *Ibid.*, I, 4 and 5.

to a Uniform Law on the Formation of Contracts for the International Sale of Goods (A/CN.9/31, paras. 144 to 156);\*

(i) Draft of a law for the unification of certain rules relating to validity of contracts of international sale of goods, followed by an explanatory report (UNIDROIT, Etude XVI/B, Doc. 22, U.D.P. 1972, French and English only);

(j) The conditions of substantive validity of contracts of sale, comparative law study prepared on behalf of UNIDROIT by the Max Planck Institut für Ausländisches und Internationales Privatrecht at Hamburg (UNIDROIT Yearbook 1966, pp. 175-410, French only).

7. At the request of some representatives, the Secretariat also placed before the Working Group a copy of notes prepared by it for its own files which set forth observations concerning certain aspects of the draft Convention on the International Sale of Goods as approved or deferred by the Working Group at its first six sessions.

#### I. DRAFT CONVENTION ON THE INTERNATIONAL SALE OF GOODS

8. In the course of its seventh session the Working Group completed its consideration of pending questions with respect to articles 57 to 69 of the draft Convention and in certain other articles in which unresolved questions had remained. The Group thereafter considered the text of the draft Convention in final reading. For this purpose, it set up a Drafting Party composed of the Chairman of the Working Group and the representatives of Austria, the Union of Soviet Socialist Republics and the United States of America. Other members of the Working Group and Observers from other States members of the Commission and from interested international organizations contributed substantially to the work of the Drafting Party. The Drafting Party was requested to formulate draft provisions in respect of certain articles in the light of decisions on substance adopted by the Working Group. The Drafting Party was also requested to ensure that the formulations in the Convention on the Limitation Period in the International Sale of Goods be followed to the largest extent possible whenever there was a similar text in the Convention on the International Sale of Goods. In addition, the Drafting Party was requested to render the English language version in the present tense, to make any necessary changes of style needed to ensure uniformity of expression within the Convention and to ensure that the four language versions of the Convention were consistent with each other.

9. At its sixth session, the Working Group had requested the Secretariat to prepare a draft commentary on the draft Convention based on the reports of the Working Group on the work of its sessions and on the various studies made by representatives and the Secretariat in respect of main issues raised by the uniform law on the international sale of goods. At its seventh session, the Working Group had before it a Note by the Secretary-General, setting forth a draft commentary on the draft Convention on the International Sale of

Goods (A/CN.9/WG.2/WP.22). The draft commentary had been prepared on the text of the draft Convention as it appeared in annex I to the report of the Working Group on the work of its sixth session (A/CN.9/100).\* The Group was of the view that a commentary accompanying the draft Convention approved by it at its seventh session would be desirable in that it would make the preparatory work and the policy underlying the formulations in the draft Convention more readily available. For this reason the Group requested the Secretariat to revise the draft commentary in the light of the deliberations and conclusions at its seventh session and decided to submit it to the Commission as annex II to this report.\*\* In addition to explanation of the provisions of the draft Convention and the Working Group's reasons for adopting those provisions, the commentary notes in respect of which provisions members of the Working Group expressed reservations. In the opinion of the Working Group, final action on questions in respect of which no consensus could be reached may be taken by the Commission at a future session.

10. The Working Group has approved the text of the draft Convention on the International Sale of Goods by consensus. However, in respect of certain articles representatives of Members of the Working Group have reserved their position with a view to raising the issues in the plenary session of the Commission. Mention of these reservations has been made in the commentary at the appropriate place.

11. In submitting to the Commission the draft Convention on the International Sale of Goods, set forth in annex I to this report,\*\* the Working Group has completed the principal part of the mandate entrusted to it by the Commission. The Working Group has not considered provisions relating to implementation of the Convention and final clauses. The Group requested the Secretariat to prepare draft provisions for consideration by the Commission at a future session.

#### II. FORMATION AND VALIDITY OF CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

12. The Working Group noted that the Commission, at its seventh session, had requested the Group to consider, upon completion of its work on the draft Convention on the International Sale of Goods, the establishment of uniform rules governing the validity of contracts for the international sale of goods, on the basis of the "draft law for the unification of certain rules relating to the validity of contracts of international sale of goods", prepared by UNIDROIT, in connexion with its work on uniform rules governing the formation of such contracts. The Working Group also noted that when the Commission, at its seventh session, considered the request of UNIDROIT that it should examine the UNIDROIT draft law on validity of contracts of international sale of goods, the view was expressed that it might be desirable to deal with the rules on formation and on validity in a single instrument and that thought should be given to the advisability of formulating uniform rules gov-

\* *Ibid.*, Vol. I: 1968-1970, part three, I, A, 1.

\* UNCITRAL Yearbook, Vol. VI: 1975, part two, I, 2.

\*\* Annexes I and II are separately reproduced below in this chapter of the Yearbook, sections 2 and 3 respectively.

erning the formation and validity of contracts in general, to the extent that they were relevant to international trade.

13. The Working Group, after deliberation, was of the unanimous view that, at its next session, it should begin work on uniform rules governing the formation of contracts and should make an attempt to formulate such rules on a broader basis than the international sale of goods. If, in the course of its work, it should prove that the principles underlying contracts of sale and other types of contract could not be treated in the same text, the Group would direct its work towards contracts of sale only. The Working Group was further of the view that it should consider whether some or all of the rules on validity could appropriately be combined with rules on formation. The Working Group decided to place these conclusions before the ninth session of the Commission. In this connexion, the Group requested the Secretariat to inform representatives on the Commission of its proposed work programme so as to obtain their views thereon at the ninth session of the Commission.

14. In preparation of its next session, the Working Group requested the Secretariat, to prepare, in consultation with UNIDROIT, one or more studies that would:

(a) Submit to a critical analysis the 1964 Hague Uniform Law on the Formation of Contracts for the International Sale of Goods and the UNIDROIT draft law on the validity of contracts of international sale of goods, and

(b) Examine the feasibility and desirability of dealing with both subject-matters in a single instrument.

### III. FUTURE WORK

15. The Working Group gave consideration to the timing of its eighth session. The Group decided to request the Commission to schedule the eighth session to start on Tuesday, 4 January 1977 and to continue until Friday, 14 January 1977 in New York.

## 2. Draft Convention on the International Sale of Goods (A/CN.9/116, annex I)\*

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### Part I. Substantive provisions

#### CHAPTER I. SPHERE OF APPLICATION

##### Article 1

(1) This Convention applies to contracts of sale of goods entered into by parties whose places of business are in different States:

(a) When the States are Contracting States; or

(b) When the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded

whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

##### Article 2

This Convention does not apply to sales:

(a) Of goods bought for personal, family or household use, unless the seller, at the time of the conclusion of the contract, did not know and had no reason to know that the goods were bought for any such use;

(b) By auction;

(c) On execution or otherwise by authority of law;

(d) Of stocks, shares, investment securities, negotiable instruments or money;

(e) Of ships, vessels or aircraft;

(f) Of electricity.

\* 17 March 1976.