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REPLIES AND STUDIES BY STATES CONCERNING THE HAGUE CONVENTIONS OF 1964

Note by the Secretary-General

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I. INTRODUCTION

Pursuant to a request of the United Nations Commission on International Trade Law[1] the Secretary-General, in a note verbale dated 3 May 1968, invited States Members of the United Nations and States members of any of the specialized agencies to indicate whether or not they intended to adhere to The Hague Conventions of 1964 (i.e. the Convention relating to a Uniform Law on the International Sale of Goods and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods) and the reasons for their position. In the note verbale sent to the States members of the Commission the Secretary-General, at the request of the Commission,[2] asked those States, in addition, to make, if possible, a study in depth of the subject, taking into account the aim of the Commission in the promotion of the harmonization and unification of the law of international sale of goods.

In his communications the Secretary-General conveyed to the States concerned the desire of the Commission that the replies and studies should be transmitted to the Secretary-General within six months from the receipt of the said communications.

The text of the replies and studies received by the Secretary-General up to 5 December 1968 is reproduced in chapter II. Replies and studies that may be received after that date will be circulated as addenda to the present document.

1/ See Official Records of the General Assembly, Twenty-third Session, Supplement No. 16, pp. 18-19, para. 14A.

2/ Ibid., p. 19, para. 14B.

II. TEXT OF THE REPLIES AND STUDIES BY STATES

AUSTRALIA

[Original: English]
27 November 1968

The attitude of the Government of Australia to The 1964 Hague Conventions on the International Sale of Goods is that while a final decision has not yet been made pending receipt of comments from certain interested bodies, the present intention is to accede to the Conventions with similar reservations to those made by the United Kingdom.

AUSTRIA

[Original: Note - English
Annex - German]
5 August 1968

Austria is not prepared at the present time to adhere to the Convention relating to a Uniform Law on the International Sale of Goods. The reasons for this attitude are elaborated in the enclosed observations by the competent Austrian authorities.

I

General considerations

(1) The value of the two Conventions is placed in doubt from the outset because of the various reservations which are permitted with respect to the sphere of application as concerns place. Articles III and XV of the two Conventions permit Contracting States either to apply the Uniform Laws only in the case of transactions between persons who have their place of business or habitual residence in different Contracting States or to apply the Uniform Laws only if the Convention on conflict of laws of The Hague Conference on Private International Law requires the application of the law of a State which has become a party to the Conventions

on the international sale of goods. Since both reservations may be exercised simultaneously, the effects of the Conventions, should they actually enter into force, will be entirely different in this or that Contracting State.

The provision which most reduces the value of the Uniform Law on the International Sale of Goods is, however, article V of the Convention relating to that Uniform Law. Under this reservation, any State may become a party to the Convention without having to make even the slightest change in its own law. Article V, which makes it permissible to apply the Uniform Law on the International Sale of Goods only where the parties to the contract have agreed that it shall apply, refers to article 4 of the Uniform Law. Thus, such agreement by the parties is meaningless, to the extent that the Uniform Law on the International Sale of Goods is considered to affect the application of mandatory provisions of the law of the State whose law would have been applicable if the parties had not reached such agreement.

What is more, the reservation in article V also produces unsatisfactory consequences in conjunction with the reservation in article III. A State which becomes a party to the Convention with the reservation in article V must, under the terms of the reservation in article III, be regarded as a Contracting State, even though the Uniform Law does not in fact form part of its system of law at all.

(2) Article 17 of the Uniform Law on the International Sale of Goods, under which the Uniform Law is to be interpreted solely on the basis of itself and the supplementary application of municipal law is to be excluded, represents an original idea, but one of questionable practicability. In the first place, some questions of very great importance to the transactions arising from contracts of sale - for instance, prescription - are not dealt with at all in the Uniform Law; it would quite obviously be impossible, for instance, to determine from the spirit of the Uniform Law the duration of the period of prescription and the time from which that period begins to run. Secondly, the Uniform Law necessarily makes use of many terms which also occur in national legislations, but the Uniform Law does not contain special definitions for these terms; it does not seem possible to separate the interpretation here from the interpretation of the same terms as they are used in national legislations.

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(3) The Uniform Law on the International Sale of Goods is too voluminous and indulges in far too much detailed regulation - owing, in part, to precisely the principle laid down in article 17. In addition, however, it is badly arranged. It is difficult even for those jurists who took part in elaborating the Uniform Law and in translating it into their own language to find a given provision in the text if for even a short time they have not been dealing with the Uniform Law. This would also have an adverse effect on the study of the Uniform Law at universities and on its practical application after it entered into force.

II

Specific defects of the Uniform Law on the International Sale of Goods

(1) The two original texts of article 10 differ, in that the English text does not mention that the person referred to must be a person of the same character. Foot-note 2 on page 26 of Tunc's commentary, which maintains that the two texts nevertheless have the same meaning, is not convincing. Moreover, the "same character" requirement cannot be seriously imposed. Apart from the fact that there simply cannot be two persons of absolutely the same character, this surely cannot refer to physical and - in the true sense - mental characteristics, any more than to the marital status, financial circumstances, age, political opinion, and so forth, of the person concerned.

(2) The term "promptly" is defined in article 11; yet this term is used less frequently in the following articles than the words "within a reasonable time", for which no definition is given anywhere.

(3) Article 15 is quite out of place in the Uniform Law on the International Sale of Goods. A provision of this kind properly appears in article 3 of the Uniform Law on the Formation of Contracts. Under many legislations, including Austria's, it is tacitly understood not only that a contract of sale is not subject to any requirements as to form, but also that any facts of legal significance may be proved by means of witnesses or in other ways.

There is, however, a difficulty to which the Austrian delegation to the 1964 Hague Conference on the International Sale of Goods unsuccessfully drew attention:

many legislations prescribe special forms for legal transactions by persons who, owing to physical or mental infirmity, can express their intentions only with difficulty. The same applies to transactions between persons who stand in certain close relationships to each other (spouses). Article 15 - and also article 3 of the Uniform Law on the Formation of Contracts - make it appear that it will no longer be permissible to prescribe such forms as concerns the sphere of application of the Uniform Laws. Tunc makes no mention of this point on page 42 of his commentary.

(4) Article 19, paragraph 2, conflicts with the provisions of various Conventions on contracts for the carriage of goods (CIM and CMR) as concerns the sender's right of disposal during transit. Tunc's commentary (pp. 46-48) does not deal with this question. It was explained at the 1964 Hague Conference that, despite the fact that the sender retained his right of disposal under the above-mentioned Conventions, the handing over of the goods to the carrier would have to be regarded as constituting delivery; if the sender (or seller) later exercised his right of disposal, he would be committing a breach of contract. This explanation is unsatisfactory; the contradiction between the terms of the above-mentioned Conventions and the Uniform Law on the International Sale of Goods can in practice only produce unpleasant consequences.

(5) Article 49, paragraph 2, first sentence, according to its wording, covers the defence that avoidance of the contract has been claimed because of lack of conformity of the goods; this defence would therefore be excluded, since it is not mentioned among the exceptions provided for in the second sentence; consequently, the buyer could be forced to bring an action in order to have the contract voided, even if he had not paid the purchase price; this consequence of the interpretation of the provision is all the more likely in view of the fact that there are instances elsewhere (in national legislations) of the automatic extinction not only of defences which assert counter-claims but also of those which contend that the transaction to which the action relates is void.

(6) In article 52, paragraph 1, the first subsidiary clause makes no distinction between cases where a right of a third person exists and those where a third person claims a right. This can only mean that the buyer is entitled to claim the guarantees set out in the article even where a third person claims a

non-existent right. This, of course, is going too far. No one can be prevented from asserting unfounded claims, and the seller cannot be held responsible for that - and, what is more, without any time-limit. If, for instance, a third person should assert years later that the goods had belonged to him since some time before the date of the contract of sale, the seller would have to guarantee to free the goods from the claim or to deliver other goods. If he was unable to do this, the buyer could declare the contract voided; even if he won the case but the costs were irrecoverable, the seller would in some circumstances have to reimburse such costs to him.

(7) Articles 54 and 55 are at odds with each other. Whereas article 55 attaches penalties to all breaches of the contract other than those which relate to the obligations of the seller referred to in articles 20 to 53, article 54 arbitrarily singles out two of those obligations of the seller which are not otherwise dealt with.

(8) Article 57, like some of the other provisions, is clearly an attempt to incorporate the concept of the legally binding content and effect of a declaration - a concept which prevails in Austria, as elsewhere, and which is particularly developed here. According to the Austrian concept, the legally binding content of a declaration is deemed to be what the recipient of the declaration could infer from it, in the light of all the conduct of the declarer which can be known to him and in accordance with fair business practice. The example of buying by catalogue which Tunc gives in his commentary (p. 70) is in conformity with this: anyone buying from a person who issues and distributes catalogues which list prices is offering a contract at the catalogue price; if he has inadvertently consulted an old catalogue in which the prices are out of date, that is his responsibility.

However, the wording of the provision goes further than this; according to the wording, the price generally charged by the seller applies even if it was unknown to the buyer and it could not be assumed from the circumstances that it was known to him, or even - and this is the serious objection - if that price is much higher than the usual price for such goods.

Lastly, the provision leaves unresolved a case which is extremely common in business affairs and which is therefore important, namely, the case where the

purchase price has not been agreed on either expressly or, by reference to the seller's general price-lists, tacitly. In that case, it is understood - at least among businessmen - that an appropriate price had been agreed on, which normally means the usual price generally agreed on for similar goods at the same place. According to the rule laid down in the Uniform Law, no effective contract of sale would come into being in such cases (as noted also by Tunc, pp. 70-72) - a consequence which is intolerable in the light of prevailing commercial practice.

(9) With regard to article 70, paragraph 1 (a), it is impossible to understand why the buyer may only declare the contract avoided if he does so "promptly" (see article 11); it might be in the interest of the buyer if a certain Nachfrist were laid down or permitted; his interest in a speedy clarification of the legal position could be protected through a provision similar to article 26, paragraph 2.

(10) Article 73, paragraph 2, prohibits the "handing over" of the goods to the buyer, thus regulating the obligations of the carrier also. In so doing, it conflicts with provisions of municipal and international law concerning the carriage of goods, and therefore goes beyond the regulation of contracts of sale. In addition, the provision imposes on the carrier in some circumstances the unreasonable burden of deciding whether the belated ban on delivery is justified; if he made a wrong decision, he would be liable for damages to the injured party; the payment of a deposit will not always be possible and will not always be a fair and proper solution.

(11) Article 74 makes it clear that impossibility of performance never avoids the entire contract, but only the obligation the performance of which has become impossible. The other party, who is the beneficiary of this obligation and is liable for reciprocal performance, retains the possibility of avoiding the contract on the ground of non-fulfilment of his requirements. This may, however, constitute a hardship for him; in many cases he may only do this if he acts "promptly" within the meaning of article 11; if for any reason he fails to act promptly, he must perform without being entitled to reciprocal performance.

(12) Article 84 provides that the date to be used in determining the current price of the goods for the purpose of calculating the amount of damages shall be the date on which the contract is avoided (whether by declaration or

ipso jure). This makes it possible for the party avoiding the contract by declaration to engage in speculations.

Sometimes, indeed, the price on the date in question will be the determining factor for the party concerned in deciding whether or not to avoid the contract. The applicable date should, instead, be the date on which the goods were delivered or should have been delivered.

(13) Article 98, paragraph 1, can also produce unfair consequences: if the handing over of the goods is delayed owing to the non-performance of accessory obligations of the buyer which he was unable to perform owing to circumstances pertaining to him but through no fault of his, then according to article 74 he has not committed a breach of those accessory obligations because he was relieved of them. The risk will then continue to be borne by the seller, even though the non-performance was solely for reasons pertaining to the buyer.

III

Specific defects of the Uniform Law on the Formation of Contracts

(1) Article 2 embodies the principle that the provisions of the Uniform Law are not of a peremptory nature and will therefore apply only if it does not appear from the preliminary negotiations, the offer, the reply, the practices which the parties have established between themselves or usage, that other rules apply. In the case of some of the provisions of the Uniform Law such deviations are not justified in view of the nature of the rule, and in many they are quite unthinkable (e.g., article 13).

Article 2 attempts, apparently in a similar way to article 57 of the Uniform Law on the International Sale of Goods, to give legal form to an elucidatory theory. Thus, the purpose is to establish the validity, not only of the expressly agreed terms of the contract, but also of what may be deemed from other utterances of the parties to be their legal intention. At the same time, however, tacit limitation should be a basic rule of individual autonomy: only intentions which are shared by both parties have any effect, and legally binding determination by one party to the contract is excluded as a matter of principle. From this

standpoint, the wording of the provision is unfortunate; paragraph 2 expressly declares a specific case of unilateral determination by a party to be without effect; it might, therefore, be concluded a contrario that the provisions contained in the offer or the reply referred to in paragraph 1 can have effect even unilaterally.

(2) The considerations relating to article 3 were mentioned in section II (3) above.

(3) The rule in article 4 that the offer must be sufficiently definite to permit the conclusion of the contract by acceptance is too vague and comes close to being a definition per idem. It should be made clear what essentials of the future contract must be already included in the offer in order for the latter to be regarded as such.

(4) The use of such terms as "good faith" and "fair dealing" can only lead to difficulties of interpretation.

(5) The rule in article 7, paragraph 2, that a reply to an offer which does not materially depart from the terms of the offer shall constitute an acceptance will be a source of disputes and difficulties of interpretation with regard to the importance of any discrepancies.

(6) The most serious criticism of the Uniform Law on the Formation of Contracts concerns the deletion of article 12 of the earlier draft. The Uniform Law does not regulate the most important questions in connexion with the formation of contracts, namely, the time and the place at which the contract comes into being. Nor does the Uniform Law on the International Sale of Goods contain anything concerning these matters. The Uniform Law on the Formation of Contracts will apply to transactions up to the coming into being of the contract, while the Uniform Law on the International Sale of Goods will apply to the consequences of the formation of the contract. Between the two instruments there remains a gap, which will have to be filled by municipal law. Since the subject-matter is international contracts of sale, it will be necessary for the purpose of determining the applicable time - and thus, also, the place of formation of the contract - to apply the rules of private international law, and, very often, foreign legislations.

(6) Article 13, paragraph 1, contains a definition of usage. Apart from the fact that the correctness of this definition is open to question, it is not at all

appropriate to define for the purposes of a single Uniform Law a term which is of significance in so many contexts.

BELGIUM*

/Original: French/
31 October 1968

It is the intention of the Belgian Government to ratify The Hague Conventions of 1 July 1964 on the international sale of goods and on the formation of contracts for the international sale of goods.

The Government's attitude has been determined by the following considerations:

1. A desire to put an end to the uncertainties involved in the application of the rules of international private law;

2. The inadequacy of national legislation on the sale of goods, which is generally designed to regulate only the domestic sale of goods,

3. The balance between the rights of the seller and the rights of the buyer which the Uniform Law attempts to achieve;

4. The favourable result of an inquiry which was conducted among the Belgian interests concerned;

5. The results of consultations with the other States which are members of Benelux and the European Communities, which also revealed support for the ratification of the 1964 Conventions.

6. The difficulties which had to be overcome in the drafting of those Conventions and which would undoubtedly arise again if the Conventions were subjected to further discussion.

The procedur for the ratification of the Conventions has been initiated. A Bill approvi , the Conventions has been submitted to the Conseil d'Etat for its opinion, and will shortly be put before the Parliament.

As Belgium has ratified The Hague Convention of 15 June 1955 on the Law Applicable to International Sale of Goods, the Belgian Government considers itself bound to make the statement provided for in article IV of the Conventions of 1 July 1964.

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* Member of the Commission.

Furthermore, because of the importance of the Convention relating to a Uniform Law on the International Sale of Goods, and because of the time required for the parliamentary approval of the Conventions in question, the Belgian Government proposes to ratify that Convention very shortly by making use of the reservation provided for in article V.

This procedure would enable Belgium to ratify the Convention before it had been approved by the Parliament, it being understood that the reservation would be withdrawn as soon as parliamentary approval had been obtained.

COLOMBIA*

[Original: Spanish]
30 October 1968

Colombia intends to adhere to the three Conventions on the international sale of goods that were adopted at The Hague conferences of 1955 and 1964. This would be in accordance with the recommendation of the Inter-American Juridical Committee, which considered that there was no justification for adopting a regional instrument in this matter because the said Conventions are satisfactory in terms of the requirements of the countries of the American continent.

DENMARK

[Original: English]
20 November 1968

The Danish Government has not yet completed its consideration of the matter which is being discussed, inter alia, with legal experts from the other Nordic countries.

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* Member of the Commission.

FEDERAL REPUBLIC OF GERMANY

[Original: English]
27 November 1968

The Federal Government intends to propose to the German parliamentary bodies that the two Conventions concluded at The Hague Conference of April 1964, i.e.

(a) the Convention of 1 July 1964 relating to a Uniform Law on the International Sale of Goods, and

(b) the Convention of 1 July 1964 relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods

be ratified, if feasible, during the present legislative term of the German Bundestag which ends in the autumn of 1969.

In making this proposal, the Federal Government is guided by the conviction that these Conventions, which are the result of long years of preparatory work, are an excellent means of ensuring a uniform solution to the most important legal problems involved in the sale of goods in international trade. Although the solutions found in the Conventions are in many respects not consistent with the provisions of applicable German law, the Federal Government considers that they offer the parties to sales contracts an adequate reconciliation of their interests and - making allowance for their purpose of standardization - may therefore be regarded as a satisfactory over-all regulation. What seems more important to the Federal Government than some objection to individual provisions, which can never be completely avoided in international agreements, is the great progress consisting in the fact that the standardization of sales law effected by the two Conventions largely removes the impediments to international trade which today frequently result from differences between national sales legislation and from uncertainty as to which national law is applicable to an international sales contract.

The benefit derived from the Conventions will grow in proportion to the number of States acceding to them. The Federal Government proceeds on the expectation that at least all member States of the European Economic Community will accept the Conventions in the foreseeable future. It would like to see as many European and non-European States as possible accede to the Conventions.

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The United Nations Commission on International Trade Law would make an important contribution towards the attainment of this objective if it decided to recommend acceptance of the Conventions to the Members of the United Nations and their specialized agencies. Should the contents of the Conventions raise any difficulties in this respect, the Federal Government would be ready at any time to assist the UN Commission on International Trade Law in searching for ways and means of surmounting them.

FRANCE

[Original: French]
19 November 1968

The French Government, considering that these Conventions, which are open to all States, constitute appropriate instruments for the harmonization and unification of the law on the international sale of goods, has decided to ratify them. It has accordingly initiated the procedure for the parliamentary authorization required by the Constitution.

IRELAND

[Original: English]
30 October 1968

The Government of Ireland has not yet completed its examination of The Hague Conventions of 1964 i.e. the Convention relating to a Uniform Law on the International Sale of Goods and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods and is therefore not yet in a position to indicate its attitude on these Conventions.

ISRAEL

[Original: English]
19 November 1968

The Israel Ministry of Justice is at present preparing a memorandum to be submitted to the Government recommending that it ratify without reservation the Convention relating to a Uniform Law on the International Sale of Goods, The Hague 1964, which was signed by Israel in 1964.

As to the question of ratification of The Hague Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, 1964, which was signed by Israel in 1964, the Israel Ministry of Justice is studying the matter favourably. The difficulty in arriving at a decision on the merits is compounded by the fact that a Public Advisory Committee under the chairmanship of Professor Guido Tedeschi of the Hebrew University in Jerusalem is now discussing a new general law on contracts for the State of Israel, in which the chapter on formation necessarily plays a prominent role. It is hoped that, as soon as the recommendations of the Committee are submitted, it will be possible to return, without undue delay, to the question of Israel's ratification of the Convention.

ITALY

[Original: French]
29 November 1968

The Hague Conventions of 1964 relating to a Uniform Law were signed by Italy on 18 December 1964, and the ratification procedure is now under way. However, these Conventions present various problems because some of their provisions are not entirely consistent with the principles of the Italian legal system. Italy - which supports all efforts favourable to the process of the unification of law (as also demonstrated by its support for the establishment and development of UNIDROIT) - intends to give favourable consideration to the possibility of these Conventions being ratified, which will no doubt require the adoption of appropriate domestic legislation. The Italian Government is fully aware that the United Nations considers the question of the unification of the law of trade to be basic to the development of international trade law.

JORDAN

[Original: English]
11 September 1968

The Government of Jordan regrets that it does not intend to ratify the 1964 Convention governing the international sale of goods at the present time.

KOREA

[Original: English]
3 November 1968

The Hague Conventions of 1964 (the Convention relating to a Uniform Law on the International Sale of Goods and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods) are under careful consideration by the Government of the Republic of Korea.

LAOS

[Original: French]
21 November 1968

Laos does not intend to adhere to The Hague Conventions of 1964 (Convention relating to a Uniform Law on the International Sale of Goods and Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods).

LUXEMBOURG

[Original: French]
9 July 1968

Luxembourg has initiated the procedure for the parliamentary approval of The Hague Conventions of 1 July 1964 relating to a uniform law on the international sale of goods and on the formation of contracts for the international sale of goods.

MEXICO

[Original: Spanish]
4 December 1968

The Permanent Representative wishes to inform the Secretary-General that, in principle, his Government considers it fitting to ratify The Hague Convention of 1955 on the Law Applicable to International Sale of Goods and The Hague Conventions of 1964 relating to a Uniform Law on the International Sale of Goods and to a Uniform Law on the Formation of Contracts for the International Sale of Goods.

NETHERLANDS

[Original: English]
29 November 1968

By Royal Message of 23 September 1968, draft-Bills pertaining to the approval and execution of both the Conventions of 1 July 1964, relating to a Uniform Law on the International Sale of Goods and to a Uniform Law on the Formation of Contracts for the International Sale of Goods, have been submitted to Parliament. In these draft-Bills the Netherlands Government has not proposed to make the Declarations referred to in Articles III, IV and V of the former Convention, nor has it proposed to make the Declarations referred to in Articles III and IV of the latter Convention.

Given the successful conclusion of the above Conventions of 1964, the Netherlands Government does not intend to ratify The Hague Convention of 1955 on the Law Applicable to International Sale of Goods. In its opinion, the removal of differences in various legal systems can be more fully realized by application of the Uniform Law on the International Sale of Goods than by application of rules governing conflicts of law.

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NORWAY*

[Original: English]
5 November 1968

I. Introduction

The Norwegian Government refers to the note LE 130 (11-4-2) of 3 May 1968 on the programme of work of the United Nations Commission on International Trade Law (UNCITRAL) concerning the harmonization and unification of the law of the international sale of goods. In his note the Secretary-General inquires whether or not the Norwegian Government intends to adhere to the Convention of 1964 relating to a Uniform Law on the International Sale of Goods and to the Convention of 1964 relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, and asks for information as to the reasons for its position. Furthermore, the Norwegian Government is invited to make a study in the depth of the subject.

As regards the question of Norway's accession to The Hague Conventions of 1964 on the international sale of goods, it ought to be mentioned that a governmental commission, charged with revising the Norwegian sale laws, has taken up this work in collaboration with similar commissions established in the other Nordic States (Denmark, Finland and Sweden). The commissions have also been requested to consider whether the Nordic States may and should accede to the conventions on the international sale of goods. The Norwegian Government will not be prepared to take a definite position concerning the question of accession before the commissions have submitted their recommendations in respect of this question. It is at present not possible to say anything definite about when these recommendations will be submitted. It might be expected, that Norway's final attitude to a large extent will be influenced by the position adopted by the States which constitute its greatest trade partners.

Norway looks favourably at the efforts aiming at the harmonization of trade law which have been undertaken, and is highly interested in participating in this work. It is particularly desirable that the law on international sale be unified. The Hague Conventions of 1964 represent in many respects a very valuable contribution in this field. Naturally, these rules will frequently be the result

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* Member of the Commission.

of a compromise, and the Norwegian Government, so far as it is concerned, would in connexion with an eventual accession be prepared to renounce particular national features in its legislation.

It should nevertheless be noted, that the provisions of the Uniform Law on the International Sale of Goods have already been met with considerable criticism in the Nordic States. Some of the main objections to this Convention will be dealt with below (see point II below).

As regards the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods, one special point, where the application of this Convention may lead to undesirable results, should be mentioned: The Norwegian authorities have under consideration the question to enact rules granting buyers a period of reflexion in certain cases, during which period the buyer would have a right to cancel the sale agreement. The cases contemplated are cases where the sale agreement has been signed during the seller's unsolicited visit in the home of the buyer or at the place where he works. In such cases the buyer may, possibly, be given the right to cancel the contract within a certain short delay, e.g., eight days counting from the date of the signing of the contract. The question of whether or not provisions to this effect should be adopted are at present being studied by a special governmental law commission. However, it seems doubtful whether such a right to cancel the sale agreement would be permissible under the provisions of the Uniform Law on the Formation of Contracts, because of the solution offered as to the moment when offer and acceptance become binding upon the parties to a contract. In this connexion it should be pointed out that the question of whether or not to adopt rules granting buyers a period of reflexion has become topical in connexion with book sales where foreign publishers act as sellers. Such matters may, depending on the circumstances, fall within the scope of the Uniform Law on Formation of Contracts.

II. The Convention relating to a Uniform Law on the International Sale of Goods

The Uniform Law undoubtedly has great merits as an instrument to unify the law on international sales. It provides a coherent system of rules on the most

important subjects of the law on sales, and seeks, in a fair and reasonable manner, to strike a balance between the rights and duties of the seller and the buyer. To a large extent the Uniform Law provides for good and acceptable solutions to difficult conflicts of interest. Generally speaking, the rules are drafted with great skill, although some of the provisions leave the impression that they have been worked out in a somewhat hasty manner.

As indicated above, the Nordic views are rather critical of several of the provisions of the Convention itself and of the annexed Uniform Law in its present state. For the purpose of giving an indicative idea of the prevailing views, some of the more important objections will be mentioned in the following. It should, however, be stressed that the comments are only to be regarded as a provisional and non-exhaustive indication and not as a definitive statement. The Norwegian Government will therefore reserve its right to take a more definite position at a later stage if this is called for by the further consideration of the subject in UNIDROIT or UNCITRAL.

At the outset one important consideration should be mentioned: the adoption of a uniform law ought not to increase, but rather to diminish, the present complexity in the law on sales. This aspect has to be taken into account on the international as well as on the national level.

Article I of the Convention

According to paragraph 2 of this article, the Uniform Law, or a translation of it, should literally be reproduced in the national legislation, leaving no possibility for adaptations of a drafting or systematical character. However, it would seem to be more appropriate if each State were to be accorded the opportunity of incorporating the provisions of the Uniform Law into its own legislation as would best suit the State concerned in view of its own legal system and traditions of drafting legal texts, without being bound by the special, and partly peculiar or unfamiliar, structure of the Law and the wording of its different articles. In connexion with the transforming into municipal law, it might be of interest to enlarge the field of application of the Law, inter alia, by means of a less restrictive definition than the one given in article 1 of the Uniform Law. In

particular, it seems unsatisfying if article I were to be construed as constituting a hindrance to a municipal codification of the complete sale legislation into one single law, comprising both provisions which are common to international and municipal sales and provisions which may partly or wholly vary from each other. A forced duplication of municipal codes on sales would be unfortunate and difficult to accept.

Articles III and IV of the Convention, cf. article 2 of the Uniform Law

Article 2 of the Uniform Law provides that its rules shall be applied regardless of what may follow from the rules of private international law. The Norwegian authorities consider it unfortunate that the Law seeks to extend its field of application so as to cover cases which have little or no connexion with the State of the forum. It is true, that article III of the Convention allows for modifications to the principle contained in article 2. Furthermore, States which have acceded to The Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods (among these the Nordic States) will find themselves obliged to make a reservation as mentioned in article IV. However, if reservations are made pursuant to one or both of the said articles, which several States probably would prefer, some complicated and dubious questions of law conflicts would arise, questions the extent of which cannot at present be fully estimated, but which will emerge because of the system established by the Convention. The principle embodied in article 2 is, consequently, unfortunate in its absolute form, whereas on the other hand modifications to the absolute principle will lead to just such confusion as the provision of article 2 aims at preventing. It is therefore suggested that article 2 of the Uniform Law be deleted, eventually amended, so as to make the application of the Uniform Law dependent on the rules of private international law of the State of the forum.

As an alternative solution it is suggested that article IV be amended in such a way that it will make it permissible for a Contracting State to accede also in the future to conventions on Conflict of Laws in the field of the law on sale.

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III. The Uniform Law

Article 1

The Contracting States might be given the opportunity of applying a less restrictive and complicated definition in their municipal law; in other words to extend the scope of the Uniform Law. The question is related to the principle of strict incorporation laid down in article I of the Convention.

As paragraph 1, subparagraph (a) is drafted, it seems doubtful whether the contract of sale, in order to fall within the sphere of application of the Law, must contain a provision or information to the effect that the goods are to be sent to another country, or whether it is sufficient that the seller understands that the goods are to be sent out of the country. It should be considered how one could elucidate the exact meaning of the paragraph. The state of confusion which presently exists is of importance, inter alia, in connexion with the question whether a fob sale or a sale "ex works" is covered by the Law.

Article 2

This provision should be deleted, cf. the remark above in respect of articles III and IV of the Convention.

Articles 5 and 8

Article 5, paragraph 2, seems to invite an interpretation e contrario, according to which only those mandatory municipal rules which are specifically mentioned in the paragraph should not be affected by the provisions of the Uniform Law. This stipulation seems superfluous in view of the provisions in article 8, according to which the Uniform Law does not regulate the validity of the contract or of any of its provisions (cf. the comments in volume II, page 30 of the proceedings of The Hague Conference, where it is stated that the Law "does not in any way affect the imperative rules of municipal law"). On the other hand, article 5, paragraph 2 does lead to ambiguity because it may lend itself to an interpretation e contrario. In order to avoid misunderstandings on this point, article 5, paragraph 2, should be deleted. If need be, there might perhaps in

addition be made some clarifications in article 8 with respect to those matters which are now regulated in article 5, paragraph 2.

Article 17

This article is unfortunate as it refers exclusively to the general principles on which the Uniform Law itself is based. This being the case, it seems doubtful whether it will be permissible to rely also on other principles in cases where adequate guidance is not provided by the "general principles" on which the Uniform Law "is based". The question is made the more acute in view of the obligation pursuant to article I of the Convention to incorporate the article literally into national legislation without any complementing provision. Preferably, the article should be deleted; alternatively, the wording should be amended with a view to avoid such limitation as mentioned.

Notification in case of delay of delivery

Article 39 lays down strict rules for the making of notifications applicable to all remedies as regards lack of conformity. As regards delay of delivery there are special rules in article 26, concerning claims for performance or avoidance, but there are no rules concerning claims for damages. This may be regarded as a lacuna in the Law. The buyer ought to be under an obligation to notify also if he is going to claim damages on account of the delay. This obligation should, however, not arise until delivery has taken place. A similar rule should be applied when the goods have been delivered at a wrong place.

Article 38

According to paragraph 3 of this article the deferment of the buyer's duty to examine the goods is subject to the condition that the redispatchment takes place without transhipment. It seems doubtful whether this condition is a suitable delimitation criterion, e.g., in case of shipment of goods in containers, etc. Instead, it should be considered whether the deferment of the buyer's duty to examine the goods ought to be made subject to the condition that an examination before redispatchment would cause unreasonable or disproportionate

inconveniences, even in the case of transhipment. The article would probably serve its purpose better if such an amendment were made.

Article 42

The right accorded by paragraph 1, sub-paragraph (a), to claim repairs (remedying of defects) ought to be made subject to the condition that it does not cause the seller unreasonable inconvenience or unreasonable expense.

The buyer ought to have the right to claim new delivery according to paragraph 1, sub-paragraph (c), only if the defect (lack of conformity) is of an essential nature (amounts to a fundamental breach of the contract).

Furthermore, the right to make claims according to paragraph 1, sub-paragraphs (a) - (c), should be subject to the condition that they are presented within a reasonable time after the buyer's notification in accordance with article 39.

Article 44

The provision of paragraph 2 seems to go too far as it grants the buyer a right to declare the contract avoided even if the defect is completely unimportant. It should, consequently, be considered whether this provision ought to be limited to cases where the requirements laid down by article 42, with the amendments suggested above, are satisfied.

Article 49

The correct interpretation of this article is probably that the one year's time-limit in paragraph 1 could only be interrupted by legal action. However, this does not clearly ensue from the wording of the paragraph.

Such a period of limitation of one year seems to be too short. The parties should be given enough time to negotiate, and the law should not force the buyer to institute legal proceedings as soon as within one year in order that he may retain the rights which have been granted to him by the law. In this context it should be taken into consideration that preparations for legal actions in the courts of a foreign State may be rather time-consuming. It is therefore suggested that the period be prolonged to two or three years. Alternatively, it might be an idea to leave out the condition that legal proceedings have to be instituted in this

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connexion, and making the enjoyment of the buyer's right dependent only on the condition that he has given the seller notification of his claim within the prescribed time-limit. If so, the period of one year might be maintained. This time-limit for the notification of the claim to reply on a lack of conformity would eventually be complemented by the ordinary rules of prescription in the field of sales.

Article 62

In this article, there should be included a provision regarding a right of interpellation in favour of the buyer, corresponding to what has been provided in article 26, paragraph 2, in favour of the seller. Furthermore, the seller ought to be obliged to inform the buyer of his decision if payment is made later than the date of payment and the seller nevertheless wishes to declare the contract void, cf. the provision of article 26, paragraph 3, concerning the seller's failure to deliver the goods at the date fixed.

According to the provision of paragraph 1 the sale contract shall be ipso facto avoided if the seller does not, within a reasonable time, inform the buyer whether he wants to declare the contract avoided or require the buyer to pay the price. It is presumed that this rule ought to be confined to cases where the goods have not been delivered. In cases where delivery has taken place, it should be sufficient that the seller has the right to declare the contract avoided.

According to paragraph 2 a declaration of avoidance has to be made promptly. This is not regarded as a well-founded general rule for all cases. As regards cases where delivery has not been effectuated, the provision ought to be amended so that the right to declare the contract avoided, will be maintained as long as the delay continues. Only when payment is made after expiry of the additional period, or when the goods already have been delivered, it seems a reasonable basis for demanding the seller to act promptly.

Article 74

The party who wants to be relieved of liability for non-performance according to this article should have a duty to notify the other party of the obstacle, so that a failure to meet this requirement would lead to a liability to pay damages for the loss sustained by the other party not having received the notification in time.

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SAN MARINO

[Original: Italian]
5 November 1968

On 24 August 1964, San Marino signed the Convention relating to a Uniform Law on the International Sale of Goods and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods.

Those Conventions were ratified by the Grand and General Council of the Republic (Consiglio Grande e Generale della Repubblica) on 5 March 1968, and the corresponding instruments of ratification were deposited with the Ministry of Foreign Affairs of the Netherlands on 24 May 1968.

In its instrument of ratification, the Republic availed itself of the provisions contained in article III of both Conventions in the sense that San Marino will apply the two above-mentioned Uniform Laws only if each of the parties to the contract of sale has his place of business or, if he has no place of business, his habitual residence in the territory of a different Contracting State.

SINGAPORE

[Original: English]
4 December 1968

The Singapore Government does not intend to adhere to the Hague Conventions of 1964 (the Convention relating to a Uniform Law on the International Sale of Goods and the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods).

SOUTH AFRICA

[Original: English]
5 September 1968

The South African Government has studied the provisions of The Hague Conventions and has elicited the views of interested organizations in this regard. Although the proposed laws may be commendable in many respects, it would appear that the field covered by the Conventions is regulated reasonably satisfactorily by either existing legislation or commercial practice and that, as far as South Africa is concerned, no compelling need exists at this stage for uniform laws on the International Sale of Goods and the Formation of Contracts for the International Sale of Goods.

For the present, therefore, South Africa does not intend to adhere to The Hague Conventions of 1964.

SWEDEN

[Original: English]
19 November 1968

These problems [relating to the Hague Conventions of 1964 on the law of international sale of goods] are presently being considered on a Nordic basis.

SWITZERLAND

[Original: French]
1 July 1968

With respect to the two Conventions of The Hague of 1964 relating to a uniform law on the international sale of goods, the matter of their signature by Switzerland is under study by the competent departments of the Federal Government.
