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REPLIES BY STATES CONCERNING THE HAGUE CONVENTION OF 1955 ON THE LAW APPLICABLE TO INTERNATIONAL SALE OF GOODS

Note by the Secretary-General

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I. INTRODUCTION

1. 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 Convention of 1955 on the Law Applicable to International Sale of Goods and the reasons for their position.

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

3. The text of the replies received by the Secretary-General until 25 November 1968 is reproduced in chapter II. Replies that may be received after that date will be circulated as addenda to the present document.

1/ Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216), p. 20, para. 17 A.

II. TEXT OF THE REPLIES BY STATES

CHILE

[Original: Spanish]
30 September 1968

The Government of Chile is not in a position to adhere to the Convention in question, since this Convention is based on principles totally different from those of the Chilean system of private international law concerning contracts. The Chilean system and the Convention both recognize the principle of freedom of choice but establish different principles in regard to cases where the parties have not expressly indicated the law applicable to the contract. In such cases Chilean legislation provides that the applicable law depends on the place where the contract is concluded and the place where the goods are situated, whereas the Convention provides that it depends on the place of residence of the vendor or purchaser.

For the above-mentioned reasons, the Government of Chile is not in a position to adhere to the 1955 Hague Convention on the Law Applicable to International Sale of Goods.

COLOMBIA

[Original: Spanish]
30 October 1968

Colombia intends to adhere to the three Conventions on the international sale of goods which were adopted at the Hague Conferences of 1955 and 1964. In doing so, it is following the recommendation of the Inter-American Juridical Committee that there is no need to adopt a regional instrument in the matter, since the above-mentioned Conventions satisfactorily meet the requirements of the countries of the American continent.

FEDERAL REPUBLIC OF GERMANY

[Original: English]
5 November 1968

The Federal Government does not intend to propose to the legislative bodies that the Federal Republic of Germany should accede to the Hague Convention of 1955 on the Law Applicable to International Sale of Goods.

1. German business quarters concerned raise considerable material objections to some points in the Convention. The objections refer on the one hand to article 2, paragraph 2, which does not permit the interpretation that agreement on a national institutional arbitral tribunal is at the same time considered to be agreement on the application of the law prevailing at the seat of that tribunal to the contract, and, on the other, to the fact that the exceptions provided for in article 3, paragraphs 2 and 3, to the principle of the applicability of the seller's law as laid down in article 3, paragraph 1, of the Convention go extremely far and lead to unjustified results.

The grounds for the objections are specified as follows:

(a) Article 2 of the Convention expresses the principle, which is to be acknowledged also from the German point of view, that international contracts for the sale of movable goods are subject to the law stipulated by the contracting parties. According to paragraph 2 of the article, that stipulation must either be contained in an express clause or be "indubitably" clear from the provisions of the contract. Re the question as to when such stipulation of the applicable

law within the meaning of paragraph 2 is "indubitably" clear from the provisions of the contract, Professor Julliot de la Morandière has given more specific comments in his report (Documents of the Seventh Hague Conference, vol. 2, p. 5 /24/).

In the light of his comments it appears doubtful whether article 2, paragraph 2, would permit the maintenance of the legal practice of stock arbitration in Germany, which has been established over many years, whereby, as a rule, it is inferred from the stipulation on the settlement of any disputes by such an arbitral tribunal that the contractual relationship as a whole is subject to German law. On the occasion of the Ninth Hague Conference unofficial talks took place on the question as to whether such an interpretation would be compatible with article 2, paragraph 2, of the Convention.

Professor Offerhaus transmitted to the delegations represented at the Conference a German proposal to the effect that it would have to be made clear by means of a protocol of interpretation that article 2, paragraph 2 does not conflict with the aforementioned practice of German arbitral tribunals. The majority of delegations took the view, however, that such a protocol would not mean a mere interpretation but amount to a material amendment of the Convention.

(b) In cases where the contracting parties have not made a stipulation fulfilling the requirements of article 2 of the Convention, article 3, paragraph 1, provides in principle that the seller's law shall govern the contract. This principle, which German business circles, too, unquestionably acknowledge, is impaired by two exceptions contained in the second sentence of paragraph 1 and in paragraph 2, which, in the view of German businessmen and scholars, can no longer be considered appropriate. Paragraph 1, second sentence, says that the seller's law governing the contract should not be the law of the State in which

the seller has his ordinary residence, but the law applicable at the place where the seller maintains the establishment having received the order. Professor Julliot de la Morandière in his aforementioned report (p. 26, loc cit.) gives the term "establishment" a very wide interpretation according to which it would follow from article 3, paragraph 1, that application of the law of the State in which the seller has his ordinary residence would be precluded whenever the seller maintains an establishment in another country and the order - for whatever reason - is sent to the establishment and not to the head office. Since, within the meaning of this interpretation, orders will frequently be addressed to establishments in cases where the buyer lives in the same country, the provision will in many cases, contrary to the principle underlying the first sentence of article 3, paragraph 1, lead to application of the buyer's law.

The German Council for International Private Law, in its detailed comments printed in Documents II of the Eighth Hague Conference, p. 234, made a proposal regarding the second sentence of article 3, paragraph 1, which is designed to restrict that provision to cases in which the seller maintains an establishment with a delivery stock of goods of the type in question; for it is the German view that only in such cases is the assumption justified that the seller is willing to subject himself to the law applicable at the place of the establishment. Another proposal of equal purport but in a somewhat simpler wording, to the effect that by means of an interpretation protocol the term "establishment" should be confined to establishments maintaining a delivery stock of their own, was sent to Professor Offerhaus on the occasion of the Ninth Hague Conference and was passed on by him to the other delegations. But, again, the majority of the other delegations held the view that the German proposal was going beyond a mere interpretation of the term "establishment" and amounted to a material amendment.

(c) The second exception to the principle embodied in the first sentence of article 3, paragraph 1, is contained in article 3, paragraph 2. This provision diverges from the principle of the first sentence of paragraph 1 in a manner which in the German opinion is unsystematic and without material justification, since, pursuant to an otherwise completely obsolete theory, it declares the law applicable at the place where the contract was concluded, and hence in effect the law of the buyer, to be authoritative, if the seller, his representative, agent or

travelling salesman receives the order - for whatever reason - in the buyer's country. The applicable law is thus made contingent upon arbitrary and frequently unforeseeable, incidental circumstances, with the result that the law to be applied to a sales contract cannot be foreseen with sufficient certainty. In addition there are the objections to the application of the buyer's law which may in many cases be raised quite generally and which have already been discussed in connexion with the second sentence of article 3, paragraph 1. The provision therefore appears to be unacceptable to German business circles for practical reasons while being rejected by German academic quarters on the ground that it is incompatible with the existing legal system.

2. Apart from the objections set out under 1 above, the Federal Government considers accession to the Hague Convention on the Law Applicable to International Sale of Goods to be undesirable also for the reason that the privileged application of that Convention would lead to a substantial restriction of the sphere of application of the Uniform Law on the International Sale of Goods. It is an essential aim of the standardization of substantive sales law to do away with any stipulation as to which national law shall be applicable. Article 2 of the Uniform Law therefore lays down that application of the Uniform Law precludes the rules of international private law except if the Uniform Law itself provides otherwise. If the Federal Republic of Germany were to ratify the Hague Convention on the Law Applicable to International Sale of Goods and avail itself of the reservation of article IV of the Convention relating to a Uniform Law on the International Sale of Goods, the result would be that the benefits afforded by the Uniform Law through the standardization of substantive law would largely be eliminated again. The existence of the Hague Convention on the Law Applicable to International Sale of Goods side by side with the Uniform Law on the International Sale of Goods would lead to considerable difficulties of interpretation, since the provisions of the Convention on the Law Applicable to International Sale of Goods and those of the Uniform Law differ quite considerably in a number of points.

HUNGARY

[Original: English]
14 November 1968

The competent Hungarian authorities intend to submit a proposal to the Hungarian Government for accession to the Convention on the Law Applicable to the International Sale of Goods, formulated by the Hague Conference on Private International Law in 1955.

IRELAND

[Original: English]
30 October 1968

The Government of Ireland has not yet completed its examination of the Convention on the Law Applicable to International Sale of Goods done at The Hague on 15 June 1955, and is therefore not yet in a position to indicate its attitude to the Convention.

ISRAEL

[Original: English]
19 November 1968

Accession to the Convention on the Law Applicable to International Sale of Goods, The Hague, 1955, is not being considered, as that Convention embodies a series of rules of private international law, whereas article 2 of the Uniform Law on the International Sale of Goods (which is an annex to the Convention Relating to a Uniform Law on the International Sale of Goods, The Hague 1964), stipulates: "Rules of private international law shall be excluded for the purposes of the application of the present Law, subject to any provision to the contrary in the said Law."

The Israel Ministry of Justice is consequently of the opinion that ratification of the 1964 Convention would obviate the necessity to accede to the 1955 Convention.

LUXEMBOURG

[Original: French]
9 July 1968

Luxembourg does not intend to ratify the Convention on the Law Applicable to International Sale of Goods, adopted at The Hague on 15 June 1955.

It has already initiated the procedure for obtaining 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. Since these two Conventions of 1964 cover the same ground as the Convention of 1955, the countries which are members of the European Economic Community have decided that those of them which have not yet ratified the 1955 Convention will not continue the procedure for obtaining parliamentary approval, and that the member countries which have already ratified the 1955 Convention will denounce it as soon as they have the option of doing so.

MALDIVE ISLANDS

[Original: English]
20 August 1968

The Maldivian External Trade does not involve in contracts of the nature envisaged by the Convention and related documents. As such, the Maldivian Government does not, at present, consider it necessary to be a signatory to the Convention.

SWITZERLAND

[Original: French]
1 July 1968

The Swiss authorities have initiated preparations with a view to adhering to the Hague Convention of 15 June 1955 on the Law Applicable to International Sale of Goods. In view, however, of the need for further consultations at the domestic level, it is not yet possible to say when Switzerland will be able to sign the Convention.

TRINIDAD AND TOBAGO

[Original: English]
30 July 1968

The Government of Trinidad and Tobago does not at the present time intend to adhere to the Convention on the Law Applicable to International Sale of Goods done at The Hague on 15 June 1955.
