

Editorial

THERE ARE PROSPECTS THAT the United Nations Convention on Contracts for the International Sale of Goods may be ratified shortly by the United States. This convention is one of the signal achievements of the United Nations Commission for International Trade Law (UNCITRAL), being negotiated over a period of ten years by commercial experts from thirty-six states representing all major legal systems and regions of the world. The draft was approved unanimously by UNCITRAL and the convention was adopted without dissent by a diplomatic conference of sixty-two states at Vienna in 1980. It has been signed by Austria, Chile, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Federal Republic of Germany, Ghana, Hungary, Italy, Lesotho, Netherlands, Norway, People's Republic of China, Poland, Singapore, Sweden, United States of America, Venezuela and Yugoslavia. It has been ratified or acceded to by Argentina, Egypt, France, Hungary, Lesotho and Syria.

On 21 September 1983 the President of the United States sent a message to the U.S. Senate recommending its advice and consent to the ratification of the convention by the United States. The argument put forward by the President is that:

International trade now is subject to serious legal uncertainties. Questions often arise as to whether our law or foreign law governs the transaction, and our traders and their counsel find it difficult to evaluate and answer claims based on one or another of the many unfamiliar foreign systems. The Convention's uniform rules offer effective answers to these problems. Enhancing legal certainty for international sales contracts will serve the interests of all parties engaged in commerce by facilitating international trade . . .

This step has been recommended by the Secretary of State, George Schultz, supported by the American Bar Association and an influential committee of lawyers from private practice, the universities and the major business corporations.

It is proposed that the United States will make a declaration permitted under the convention. Article 1 (1) provides as follows:

This Convention applies to contracts of sale of goods between 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.

Under Article 95, however, any state may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by sub-paragraph (1) (b) of Article 1. This the

President proposes to adopt, on the advice of the American Bar Association, on the grounds that the rules of private international law are subject to uncertainty and international disharmony, whereas applicability based on sub-paragraph (1) (a) is determined by a clear-cut test. Sub-paragraph (1) (b) would further displace U.S. domestic law more frequently than foreign law because it would be relevant only in sales between parties in the United States and a non-contracting state. When private international law points to the foreign law of a non-contracting state the convention will not displace that foreign law.

The convention itself applies to all sales of a commercial character. It deals with the formation of the contract between the buyer and seller, but it does not deal with the validity of the contract or fraud, nor with capacity, such as infancy, or the authority of agents, which are subject to applicable national law. It regulates the rights as between buyer and seller, but does not deal with the right to the property that may be acquired by third parties. Nor does it specify when specific performance may be ordered by the courts, which is left to the national law of the forum. The convention is essentially designed to fill gaps left by the parties, for it is subject to the terms agreed upon by the parties themselves, as well as usages of the trade, which have received a wide definition. In response to the needs of the U.S.S.R., any state may make a declaration under Article 96 requiring parties whose place of business is in that state to conclude the contract in writing, but this will only apply when conflicts rules point to the formal requirements of the declaring state. Although writing may be required under the U.S. Uniform Sales Act (1896) and the Uniform Commercial Code, it was nevertheless decided that such a stipulation was inappropriate for modern international means of commerce, and no declaration by the United States is contemplated under Article 96.

If the United States ratifies the convention this will no doubt lead to a fresh examination of their position by other leading trading countries, including the member states of the European Community.